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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 44

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN, PETITIONER

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the court of appeals (R. 71–84) is reported at 331 F. 2d 53.

JURISDICTION

The judgment of the court of appeals was entered on December 17, 1963 (R. 91), and a petition for a writ of certiorari was filed on March 12, 1964. The petition was granted on April 27, 1964 (377 U.S. 915; R. 181). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1) and Section 14(a) of the Subversive Activities Control Act of 1950, 50 U.S.C. 793.

QUESTIONS PRESENTED

The Subversive Activities Control Act of 1950 provides for the registration of any "Communist-front organization," which is defined (Section 3(4)) as an organization "which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization * * *." Petitioner was found by the Subversive Activities Control Board to be controlled by, and to be operated primarily to give aid and support to, the Communist Party, which the Board had previously found to be a Communist-action organization. The questions presented are:

1. Whether the Board correctly interpreted and applied the Act.

2. Whether the Board's findings are supported by substantial evidence.

3. Whether the Board committed prejudicial error in limiting cross-examination of a government witness.

4. Whether the provisions of the Subversive Activities Control Act of 1950 providing for the registration of "Communist-front" organizations violate the First Amendment.

5. Whether the Act, as construed by the Board, is unconstitutionally vague under the First Amendment or the due process clause of the Fifth Amendment.

6. Whether the Act violates the due process clause of the Fifth Amendment by not allowing petitioner to relitigate whether the Communist Party was a Communist-action organization.

7. Whether the registration provisions violate the self-incrimination clause of the Fifth Amendment.[1]

STATUTE INVOLVED

The pertinent provisions of the Subversive Activities Control Act, 50 U.S.C. 781, *et. seq.*, are set forth in the Appendix to the petition, pp. 26a–39a.[2]

STATEMENT

The Attorney General began this proceeding on April 22, 1953, by filing with the Subversive Activities Control Board a petition for an order requiring petitioner to register as a Communist-front organization under the Subversive Activities Control Act (Tr. 7510). On August 28, 1953, the Attorney General filed an amended petition (R. 2–7). Hearings were held before a hearing examiner of the Board, who issued a decision on September 10, 1957, recommending that petitioner be ordered to register (R. 16). On June 27, 1960, the Board issued a Report and Order determining petitioner to be a Communist-front organization and ordering it to register (R. 70).

On appeal, the court of appeals remanded the case to the Board to allow petitioner to introduce additional evidence that the testimony of a witness for the Attorney General, Barbara Hartle, was false (R. 72).

[1] Petitioner also raises the issue whether the Board's construction of Section 3(2)—which defines the meaning of "organization"—violates the First Amendment and the due process clause of the Fifth Amendment. This question, however, was not raised in the petition for a writ of certiorari and is not properly before this Court (see pp. 146–148 below).

[2] The entire Act is analyzed in Appendix A below.

On March 8, 1962, the Board issued a "Report on Reconsideration," in which it held that Mrs. Hartle's testimony was credible and reaffirmed its earlier order (R. 72). On December 17, 1963, the court of appeals, one judge dissenting, affirmed the Board's order (R. 71–90).

The evidence and findings of the Board are as follows:[3]

1. *Control of Petitioner by the Communist Party.*—*a. The National Committee.*—The American Committee for Protection of Foreign Born is an organization which has existed in the United States since 1932 or 1933, with its main office and headquarters in New York City (Tr. 262–263; R. 20). Petitioner grew out of the International Labor Defense, the American section of International Red Aid which had its headquarters in Moscow (Tr. 255–256; R. 37).[4] Final policy

[3] In supporting the statements made, we refer first to the evidence—the transcript of the proceedings before the Board ("Tr.") or exhibits introduced either by the Attorney General ("A.G. Ex.") or by petitioner ("P. Ex.")—and then to the Board's findings, if any, based on this evidence, in its Report ("R.").

Much of the evidence supports both petitioner's control by, and support of, the Communist Party. We have described such evidence in the portion of the Statement to which it seems most relevant.

[4] While the Board did not explicitly find that petitioner arose from the International Labor Defense, it did find that petitioner originated in 1932 or 1933 (R. 20), and that a "Committee for Protection of Foreign Born" was organized in 1932 by International Labor Defense (R. 37). A government witness testified that, when ~~petitioner was organized in 1933, one of its secretaries was Dwight Morgan~~ (Tr. 266). Petitioner's witness Abner Green testified that in 1935, when he first became connected with petitioner, Irving Novick

the Committee for Protection of Foreign Born was organized in 1933, one of its secretaries was either Fred Biedenkapp or Dwight Morgan

decisions in the International Labor Defense were made by a Communist fraction of that organization or by Robert Minor, a member of the Communist Party's Central Committee and the liaison man between the Party and the Defense (Tr. 252–254; R. 37). In 1932, as a result of a suggestion by Minor, a "Committee for Protection of Foreign Born" was organized to take over International Labor Defense's legal work in deportation cases (Tr. 262–263; R. 37).

Petitioner's constitution provides that it shall be a "non-membership" body (P. Ex. 88; R. 25, 41). Consequently, its annual conferences, which review the past year's work and adopt general programs, are attended by delegates from various organizations and any interested members of the general public (Tr. 4873–4875, 2462–2465, 2489; R. 55). Both under its constitution and in practice, petitioner's activities are actually run by the administrative and particularly the executive secretaries (Tr. 4289, 4572; R. 31, 56, 57). While petitioner had co-chairmen and honorary co-chairman, they had little to do with its actual opera-

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and Dwight Morgan were in charge of its office (Tr. 4806, 4811). During 1935 Dwight Morgan, identified as the secretary of the American Committee for the Protection of Foreign Born, wrote articles for the *Daily Worker* on deportation and similar subjects (A.G. Exs. 96, 97, 109). Since there was no other evidence concerning petitioner's origins, it is clear that the Board, not surprisingly, concluded that the Committee for Protection of Foreign Born, which had the purpose of defending Party members, was the same as the American Committee for Protection of Foreign Born, which had the same purpose.

tions (Tr. 4193, 4242–4244, 4288–4289, 4293, 7015–7016, 7035–7036, 7040, 7053; R. 32, 56).

From December 1941 until his death in 1959, petitioner's executive secretary and dominant figure was Abner Green (Tr. 4819; R. 28). John Lautner testified that early in 1942, when he was an official of the Communist Party, he and another Party functionary, Avro Landy, were assigned by the Party to decide a dispute between Irving Novick, then petitioner's leader, and Green; that Green and Novick were both Party members and subject to Party discipline; and that, after Lautner and Landy met with Green and Novick at Communist Party headquarters in New York, they decided that Green should be the "head" of petitioner (Tr. 991–996, 1093; R. 29). Lautner also testified that Green attended the 1948 convention of the Communist Party, that he attended other Party meetings, and that he (Lautner) saw Green in the Party building on numerous occasions between 1948 and 1950, when Lautner left the Party (Tr. 1007, 1094–1095; R. 28).

Lautner also testified that he had known Harriet Barron, who was administrative secretary of the Committee from 1945 or 1946 through the time of the hearing, as a Party member (Tr. 1013, 1196–1199; R. 31). He attended Party meetings with her in the 1930's and 1940's and had done Party business with her (Tr. 1013, 1190–1199; R. 31). According to Lautner, petitioner's leaders, including Green and Miss Barron, "attended Party meetings and had the benefit of the discussions and deliberations of the Party on all poli-

cies, and carried out Party policies with respect to their own organization, and fitted Party policies into the functions of their own organization" (Tr. 1005; R. 40).

Barbara Hartle, formerly a leading official of the Communist Party in the State of Washington, testified that Henry Huff, the chairman of the Party District, reported to the District Board that he had met with Green and the executive secretary of petitioner's North-West Committee[5] on a visit Green had made to this local committee (Tr. 1599–1600; R. 30). Later, in 1953, Green was present at a luncheon meeting of the defendants in a Smith Act trial in Seattle at which he talked with Huff concerning the work of the American Committee and the progress of its North-West Committee (Tr. 1547, 1597–1600; R. 30).

Mary Markward, another former Party member, testified that Dorothy Strange, who was naturalization aid director of petitioner from 1948 until the position was abolished in 1952, was a Party member. Miss Strange was elected to the Party District Committee and Board in 1945 and worked in the Party district office in the District of Columbia. (Tr. 3161–3163; R. 41). Miss Strange told Mrs. Markward that the work she (Miss Strange) was doing in petitioner was for the benefit of the Party (Tr. 3160–3163; R. 41).

The Board concluded that Green and Miss Barron were members of the Communist Party, that the

[5] See pp. 8–10 below as to the evidence that the various local Committees for Protection of Foreign Born were part of the American Committee.

Party had selected Green as the leader of the Committee, that Green and Miss Barron controlled the national organization as representatives of the Party, and that petitioner's activities were controlled by Party members (R. 31, 56, 57).

b. The Connection of the Local Committees With the American Committee.—Besides the American Committee in New York, local organizations functioned in other places under names like the "New England Committee for Protection of the Foreign Born." The official organ of the American Committee, *The Lamp,* which Green edited, reported in detail on these committees (A.G. Exs. 24, 30, 35; R. 23). It, as well as other publications of the American Committee, frequently listed the addresses of the local committees under the heading of "American Committee for Protection of Foreign Born," designated the local offices simply as "Mid-West," "North-West," etc., and treated the activities of the local committees as part of its own activities (A.G. Exs. 19, 25 (p. 4), 56, 166; P. Exs. 84, 197; R. 23, 25–26). While the American Committee on several occasions listed various outside organizations as aiding its own programs, it never so listed the local committees (See A.G. Exs. 171, 180, 182, 244; P. Ex. 213; R. 23, note 1). In the annual reports of its general counsel the American Committee described legal action it had taken on a nationwide basis without any indication that the cases were being handled by separate organizations (A.G. Ex. 17; P. Ex. 117; see also R. 23).

The August 1949 issue of *The Lamp* stated that a North-West Committee for Protection of the Foreign

Born had been established "as a part of" the American Committee (P. Ex. 151, p. 4; R. 22). The North-West Committee published a pamphlet which described itself as "affiliated to the American Committee" and listed the officers and sponsors of the American Committee before its own (A.G. Ex. 34; R. 22). *The Lamp* said in a 1948 issue that "[t]he National Office of the American Committee is located in New York" and "[a] Midwestern Office is maintained in Chicago" (A.G. Ex. 198; R. 22). A brochure issued by the Mid-West Committee upon its formation said that the Committee "functions as a part of a national organization, the American Committee for Protection of Foreign Born" (A.G. Ex. 256; R. 22).

The American and local committees worked closely together. The American Committee initiated the organization of the Mid-West and New England Committees (Tr. 5136–5138, 5144, 4079–4086, 6955–6956, 6962; R. 24) and the reorganization of the Los Angeles Committee (Tr. 2377, 6869; R. 24). The local committees sent "delegates" to the annual conferences of the American Committee (Tr. 2462–2465, 2489, 5188, 5366–5367, 6821, 6875; R. 54). The New England and Los Angeles Committees published leaflets urging contributions to the American Committee (P. Ex. 22, 67).

If a problem arose about an alien in Chicago, which could not be handled by mail, Green sent him the name and address of the Mid-West Committee (Tr. 5131). The Northern California Committee handled the case of Dr. Krishna Chandra, but the American Committee obtained counsel to represent him (P. Ex.

22; Tr. 6568–6569; see also Tr. 5211–5213; R. 23). Abner Green arranged the speaking tour of two women whose husbands' cases were being handled by the Los Angeles Committee (Tr. 2606, 2614–2615). Green made numerous trips to visit the local committees (Tr. 2377, 6555, 6559–6560, 6701, 6869, 6890, 6955–6956, 6962; R. 24). The former executive secretary of the Los Angeles Committee testified that Green acted as coordinator of all area committees (Tr. 2398, 2404; R. 24). Numerous officers of the American Committee also served as officers of local committees (Tr. 4001, 4020, 4039–4040, 4076, 4389, 5189, 5790, 5803, 6516, 6659; R. 24–25, 38, note 1).

The Board found that (R. 27):

> The fact that the area committees have their own officers and other indicia of day to day autonomy is not inconsistent with their being associated with the American Committee. Such characteristics are commonplace in organizations consisting of a national body and affiliated branches or chapters. We find on the entire record that the American Committee and the various area or local committees are associated together for joint action on particular subjects. Together they constitute a voluntary association and one organization within the meaning of the term "organization" set forth in section 3(2) of the statute.[8]

[8] Section 3(2) of the Act provides that "The term 'organization' means an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects."

c. The Connection of the Local Committees with the Communist Party—The organization of the North-West (Washington State) Committee resulted from discussions in Communist Party meetings in Seattle about the need for a local branch of the American Committee to defend Party members (Tr. 1584, 1586–1588, 2980–2984, 5179; R. 38). Marion Kinney, a Party member, was assigned by Party officials in late 1948 or early 1949 to start the local committee (Tr. 1587–1588, 1736; R. 33). She received instructions from Party officials as to how this should be done and reported her progress to them (Tr. 2882–2886; R. 33, 37–38). Professor Herbert J. Phillips, another Party member, and later Marion Kinney, who was relieved of other Party duties for this purpose, served as executive secretary of the North-West Committee[7] (Tr. 1586–1588, 2980, 2983–2986, 3115, 3124, 3128, 5193; R. 33–34). Mabel Conrad, the treasurer, was also identified as a Party member (Tr. 1590; R. 34).

Evelyn Abelson was the executive secretary, and Bess Steinberg was the administrative and later the executive secretary, of the Western Pennsylvania Committee. Witnesses testified that Miss Abelson and Miss Steinberg were Party members, that Miss Steinberg attended closed, policy meetings of the Party and 30 or 40 Party district conferences, and that Miss Abelson attended Party meetings and collected Party dues (Tr. 344, 353–354, 510–511, 622–623; R. 34). Joe Mankin, who served at one time as

[7] The local committees, like the national, were run by their executive secretaries (*e.g.*, A. G. Ex. 62; R. 33, 56–57).

administrative secretary of the Western Pennsylvania Committee, was also a Party member (Tr. 364).

The Michigan Committee had Saul Grossman, a Party member, as its executive secretary for years after its founding in 1947, and he was still an officer at the time of the hearing in 1955 (Tr. 1331–1339, 1528–1529, 1536; R. 34). Peggy Wellman, also a Party member, was administrative secretary and later executive secretary (Tr. 1553–1554, 1560, 5228; R. 34–35). Evidence showed that the Michigan Committee was established to defend foreign-born members of the Communist Party (see p. 14 below).

The executive secretary of the New England (Boston) Committee until approximately 1953 was Ruth Hillsgrove, who was identified as a Party member by James Glatis who had attended Party schools and meetings with her (Tr. 745, 748–749, 800–801, 803–809; R. 34).

The executive secretary of the Los Angeles Committee from 1949 to 1951 was Delphine Smith, who, according to a witness, admitted that she was a member of the Communist Party (Tr. 2447, 2701; R. 35).[3]

The Board concluded that (R. 35):

> [T]he effective management, direction, and supervision of the local branches of [petitioner] are substantially and primarily performed by and are under the control of members and rep-

[3] The testimony of witness Czarnowski, who testified at length about the Mid-West Committee, was stricken (R. 19). There were also local committees in Minneapolis, Oregon, San Francisco, and Philadelphia, as to which there was only incidental reference in the record (R. 21–22).

resentatives of the Communist Party. In view of our findings *supra* as to the leadership of the national organization it follows that the entire organization (national and locals) is effectively under the management, direction and supervision, and controlled by members and representatives of the Communist Party.

2. *Petitioner's Aid and Support of the Communist Party.*—The Communist Party has long had as a major objective winning the adherence of the foreign born. At its eighth convention in 1934, it issued a declaration stating that "the foreign born workers constitute a revolutionary factor of the utmost importance" and describing methods for "drawing the foreign born workers into the main stream of the class struggle, into the Communist Party and the mass organizations, particularly the trade unions" (A.G. Ex. 1, p. 701; R. 36).

Even before 1934, the Party put this program into effect. In the early 1930's the International Labor Defense, which was the American section of International Red Aid and which was controlled by "a Communist fraction," attempted to provide legal defense of persons arrested as a result of involvement in working class activity, to organize mass demonstrations and petitions concerning such arrests, and to recruit members to the Communist Party (Tr. 237, 239, 268; R. 37). About eighty percent of the deportation cases handled by International Labor Defense involved charges of Communist Party membership (Tr. 267, 306–307; R. 37). Petitioner grew out of a committee organized in 1932 to handle the Inter-

national Labor Defense's legal work in deportation cases (Tr. 262; R. 37). The Labor Defense was to continue to handle the mass demonstrations concerning these cases (Tr. 265; R. 37).

The local committees of petitioner were not organized until considerably later. Barbara Hartle testified that at the meetings in 1948 and 1949 of the Party's North-West District Committee and Board, which led to the formation of petitioner's North-West Committee, the functions of such a branch were seen as defending Party members threatened with deportation and attracting persons interested in problems of the foreign born to support Communist Party positions (Tr. 1581–1583; R. 36). Clark Harper, another former Party member, testified that Henry Huff, the leader of the Party's North-West District, stated that a branch of the American Committee was needed to protect "our foreign born comrades" and help build the Party (Tr. 2977; R. 36). As we have noted (p. 11), these discussions resulted in instructions to a Party member to organize a local committee of petitioners, which she did successfully.

Bernice Baldwin, a member of the Communist Party who had been assigned to represent it at petitioner's national conference in 1949, testified that the Michigan Committee of petitioner was established to relieve the Civil Rights Congress of the burden of defending foreign-born Party members (Tr. 1536–1537; R. 38). James W. Glatis, who was assigned by the Party to work in Communist-front groups secretly rather than openly as a Party member, attended the

meeting which began the New England Committee (Tr. 733, 743–754, R. 38–39).[9] He testified that the latter committee was formed to defend in deportation hearings members of organizations dedicated to overthrow of the government by force and violence (Tr. 7774; R. 39).

John Lautner, who was a leading member of the Communist Party and was on petitioner's Executive Committee, explained that the American Committee "functioned to give legal aid and legal protection for members of the Communist Party, and particularly leaders of the Communist Party," and that its leaders "carried out Party policies * * * into the functions of their own organization" (Tr. 1004, 1005; R. 39, 40). Mary Markward testified that Dorothy Strange, a Party member and an officer of the American Committee, told her that her (Miss Strange's) work for petitioner was just as important to the cause of Communism and the Party as any work being done by a "functionary" of the Party (Tr. 3760–3763; R. 41).

The Board concluded (R. 36):

> The record shows that the Communist party of the United States has had a continuing policy toward the foreign born. The aims and purposes of the Party have been: (a) to seek to prevent the denaturalization and deportation of officers and members of the Party, and (b)

[9] Apparently, the New England Committee was not successful at the beginning since, after the meeting attended by Glatis in 1950, a second "founding" meeting was held in 1952 (Tr. 4077–4078, 4084, 4086, 6955–6956, 6559–6560, 6962). Glatis did not attend the 1952 meeting but did attend meetings of the local committee in 1953 and 1954 (Tr. 762–771).

> to win the goodwill of the foreign born and obtain from them adherents to aid support for the Party and for Party programs. The record also shows that it was the policy of the Communist Party to carry out and advance these aims and purposes through and by an organization separate from and not a part of the Communist Party as such.

Petitioner's major activities have been the defense of foreign-born persons in deportation and denaturalization cases and efforts to have legislation in this area repealed or amended. While petitioner has defended many persons not charged with membership in the Communist Party, a large part, if not a majority, of the cases in which it participated, did involve Party membership. For example, it defended such Party leaders as Alexander Bittelman, Jack Stachel, John Williamson, Betty Gannett, additional members of the Party's national committee, and numerous other Party members (Tr. 1050–1053; A.G. Exs. 16, 19; R. 59–60). Petitioner defended Gerhart Eisler not only in deportation proceedings but when he was charged with contempt of Congress (A.G. Ex. 202; R. 43–44).

Four senior Immigration and Naturalization officers testified that of the 200 or more persons named by petitioner as threatened with deportation in a leaflet issued in 1950 (A.G. Ex. 19), a large proportion were charged with Party membership or subversive activities (Tr. 3394–3675, 3776–3855). Petitioner states (Pet. 8, note 6) that it has litigated 20 cases in this Court. Of the 20, all but two involved charges of Party membership, membership in an or-

ganization advocating violent overthrow of the government, or similar activity. Petitioner also has worked for the repeal of all statutes providing for deportation of aliens because of membership in the Communist Party (A.G. Exs. 25, 218, 236, 243, 244; P. Ex. 191; R. 58). Green testified on direct examination that in 20 years the Committee participated in four to five thousand deportation proceedings and out of that number "about 350 or 400" involved charges of Party membership or membership in another organization advocating the violent overthrow of the government (Tr. 6112–6113). On cross-examination, he testified that between 1948 and 1950 the committee participated in more than 200 cases each year which he termed "political" (Tr. 6721, 6742).[10]

Lautner testified that petitioner's defense of persons who were not members of the Communist Party was not incompatible with operating as a Party defense organization (Tr. 1139; R. 57). He stated that this would be useful since it "would add to the prestige of the organization" (Tr. 1139; R. 57). Moreover, the Party publicized the fact that a purportedly non-Party organization was defending Party members and vigorously attacked their "harassment" by the government (A.G. Ex. 124, 127, 138; R. 63–64).

In addition, petitioner actively worked for the repeal of statutes providing for the deportation of Party members (*e.g.*, A.G. Exs. 25, 218, 236, 243, 244;

[10] Green testified that the figures he gave included cases carried over from one year to the next (Tr. 6721). Apparently his figures included cases handled by local committees, such as the Mid-West Committee (Tr. 6596).

P. Ex. 191; R. 58). It also engaged in campaigns on issues having no direct bearing on the foreign born. For example, in 1953, petitioner circulated a booklet written by Green in which he referred to the "rotten frameup of the Rosenbergs" as caused by anti-Semitism (P. Ex. 191, p. 47; R. 46). Petitioner published articles or booklets strongly attacking the prosecution of Communist leaders under the Taft-Hartley and Smith Acts and calling for their repeal (A.G. Ex. 169, 191 (p. 47), 279 (p. 3); P. Ex. 291 (p. 47); R. 44–47).

The Board found that the evidence indicated that of the cases handled by the American Committee over 50 percent involved allegations of past or present Party membership (R. 58). The Board concluded that (R. 60):

> A substantial part of respondent's resources, time and efforts have been devoted to campaigns directed at the elimination of all provisions of the laws under which alien members and officers of the Communist Party are deportable, to the legal and propaganda defense of such persons when they have been actually involved in deportation proceedings, and to instigating protests against Government officials when deportation charges have been brought against Communists. Respondent has consistently and strongly sought funds from the public with which to carry out its activities and has sought to win the good will of the foreign born. Obviously these activities, particularly in opposing the laws and working to prevent the deportation of Communists, constitute aid to the Communist Party.

Furthermore, the Board found, the Party was able to "capitaliz[e] on and us[e petitioner's] activities, such as the defense of Party leaders in deportation proceedings, to the advantage of the Party" (R. 63). It further concluded that petitioner outside the field of the foreign born "as well as in its views and policies in the field of the foreign born * * * has paralleled the views and policies of the Communist Party and has not in any instance deviated therefrom. We find that the clear preponderance of the evidence establishes that the purposes of [petitioner] have been to aid and support the Communist Party" (R. 53).

Petitioner's control by, and aid to, the Party is reflected in the Party's reciprocal aid. While petitioner's main source of financial support seems to have been contributions from the general public and from organizations whose members had problems under the immigration and naturalization laws, petitioner also received financial assistance from the Communist Party (Tr. 6235–6237; A.G. Ex. 150–C; R. 61). In addition, the Party circulated petitioner's literature, sold tickets to its affairs, gave it favorable publicity in the Party press, and told Party members to contribute to it financially, attend its meetings, and aid its programs (Tr. 357–358, 761, 776–778, 972, 1001–1002, 1601, 2986–2987; A.G. Exs. 89, 132; R. 61, 62–63). For example, a report at the Party's national convention in 1951 stated that petitioner "performs invaluable service in the fight against the government's deportation drive" and said "all progressives," *i.e.*, Party members, should "help raise funds, and support [its] work" (A.G. Ex.

229, p. 127; R. 40). William Z. Foster, the Party's leader, likewise wrote an article published in *Political Affairs,* an official Party journal, stating that "progressives" had the duty to raise funds for petitioner (A.G. Ex. 229; R. 60, note 1). In addition, as stated above (pp. 6, 11, 14), the Party selected the officials to head petitioner itself and at least one of its branches and participated in the organization of branches.

The Board determined that there was "a definite policy on the part of the Communist Party fully to support" petitioner and that this policy resulted in "a consistent pattern of Party support of [petitioner] and aid in [petitioner's] activities" (R. 60, 61; see also R. 64).

In conclusion, the Board found that (R. 66):

> [Petitioner] has been and is (i) substantially directed, dominated or controlled by the Communist Party, a Communist-action organization, * * * and (ii) primarily operated for the purpose of giving aid and support to such Communist-action organization.

SUMMARY OF ARGUMENT

This case involves the provisions of the Subversive Activities Control Act which give the Subversive Activities Control Board the responsibility of determining whether organizations are Communist fronts and which require organizations so found to register, disclose the names of their officers (but not members), and give a financial accounting. The Act defines a Communist front as an organization controlled by, and operating primarily to give aid

and support to, a Communist-action organization (Section 3(4))—in this case, the Communist Party. As a consequence of this definition and that of a Communist-action organization in the Act (Section 3(3)). Communist fronts are by definition controlled by the world Communist movement. Thus, Communist fronts are in effect subsidiaries of Communist-action organizations which in turn are subsidiaries of the integrated and disciplined world Communist movement.

I

The court below correctly sustained the Board's ultimate factual finding that petitioner is a Communist-front organization as defined in the Act.

A. Administrative agencies have considerable discretion in construing the Act they are charged with administering. *E.g., National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U.S. 111. The determinations of such agencies are entitled to even greater weight as to findings of fact, the credibility of witnesses, and the admissibility of evidence. Moreover, Congress charged the courts of appeals with primary responsibility for ascertaining that the findings of administrative agencies are sufficiently supported. See *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U.S. 498. All these well-established principles were specifically applied to this Act by the Court in *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, 28–29, 69, 130–131.

The Board found, on the basis of ample evidence, that petitioner is a Communist-front organization. It presented the grounds of this finding, and the subsidi-

ary findings on which it rests, in an exhaustive report. The court below, in discharge of its statutory obligation, determined that the Board's conclusion was supported by the evidence after a painstaking review of the entire record. In these circumstances, there is no occasion for this Court to subject the lengthy transcript to a second judicial review for the purpose of reappraising and re-evaluating the evidence. The Court need do no more than satisfy itself that the court below made a fair assessment of the record on the issue of sufficiency of the evidence. That the court below did so is evident from its opinion. Moreover, most of petitioner's contentions to the contrary are little more than quibbles which, even if correct, would not justify overturning the decision below.

B. The record shows that the Board's finding that petitioner is controlled by the Communist Party is supported by the evidence. The record shows that petitioner arose out of a Communist organization, that petitioner, as well as the local committees which were shown to be a part of it, were run by members of the Communist Party, that petitioner's principal officer was chosen for this position by the Party, and that petitioner's officers carried out Party policies within petitioner. While much of the evidence relates to events prior to the passage of the Act in 1950, the Board was entitled to consider this information as bearing on petitioner's present character. *Communist Party* v. *Subversive Activities Control Board, supra,* 367 U.S. at 69; *Federal Trade Commission* v. *Cement Institute,* 333 U.S. 683, 703–706. There was no evi-

dence that the Party's relationship to petitioner changed after 1950; indeed, the evidence showed the continuation of the close relationship.

C. 1. Petitioner's principal non-constitutional contention is that the aid component of the Act's definition of a Communist-front organization requires proof that the alleged front operates primarily to give aid and support to forcible overthrow of the government. However, Section 3(4) imposes no such requirement; it merely requires a showing that the organization is primarily operated for the purpose of giving aid and support to a Communist-action organization. Moreover, Section 2(7) of the Act describes Communist fronts as concealing their Communist relationships in order to attract non-Communist support. This finding is supported by the theory and history of Communist fronts here and elsewhere in the world. Obviously, then, Communist fronts by their very nature cannot and do not advocate forcible overthrow. Thus, if, as petitioner contends, the government must show that the alleged front advocated forcible overthrow, the front provisions of the Act will be stripped of all meaning.

On the other hand, the Board's interpretation of the Act does not mean that organizations which happen to support causes which the Communist Party also supports must register. For the Act requires proof of control by a Communist-action organization and the purpose of operating to support it.

B. The evidence before the Board supports its conclusion that petitioner operated both in purpose and in actual effect primarily to give aid and support to

the Communist Party. Petitioner arose from an organization which was designed to aid the Communist Party in several ways including defending persons arrested in working class activity and recruiting Party members. Petitioner has itself defended large numbers of Party officers and members in deportation cases, supported Party positions concerning statutes aimed at the Communist Party, and served as a source for recruiting Party members. The evidence showed that in carrying out these activities, petitioner was deliberately following Party policies.

While petitioner also defended many non-Communists, the record shows that this too served Communist purposes by allowing petitioner to pose as a non-Communist organization interested only in protecting the civil liberties of the foreign born. As a result, petitioner was in the position of being able to attract the non-Communist support essential to give numerical weight to petitioner's support of Party positions, to provide financial aid, and, after their gradual indoctrination of its supporters, to be a source for new Party members.

D. Section 3(2) of the Act defines "organization" to include an "association" or "a group of persons * * * associated together for joint action on any subject." Since Section 3(1) defines "person" as including "an organization," an "organization" under the Act may include various sub-groups.

The evidence showed that the local Committees for Protection of Foreign Born worked intimately with the national committee and were considered by the national committee to be part of the same organiza-

tion. Thus, the Board was correct in holding that local committees were part of the same organization as the national committee within the meaning of the Act.

E. The hearing examiner's refusal to allow petitioner to ask witness Lautner where he lived was well within the examiner's broad discretion in determining the scope of proper cross-examination. It was also within the discretion of the Board, assuming the question should have been allowed, to refuse to strike the witness' testimony because of this one question during the lengthy cross-examination of this witness. *Alford v. United States,* 282 U.S. 687, upon which petitioner relies, involved a criminal trial and circumstances making the question of the witness' residence considerably more material than was the case here.

II

The provisions of the Act which are involved in this case have two separate parts. First, the Board is charged with determining whether organizations are Communist fronts. Second, the Act requires any organization found to be a front to register, disclose the names of its officers, and give a financial accounting. Since it is clear that Congress intended that the first function of the Act should continue whether or not registration and disclosure could be effectuated, the two parts of the Act must be considered separately.

A. The authority of the Board to determine whether organizations are Communist fronts is clearly consti-

tutional. This Court has never even suggested that the First Amendment bars the government from finding and promulgating facts which are being concealed in order to deceive the public, where, as here, fair procedures are provided. Indeed, in *Viereck* v. *United States*, 318 U.S. 236, 251, Mr. Justice Black, in dissenting on other grounds, stated that government publication of such information "implements rather than detracts from the prized freedoms guaranteed by the First Amendment." And in the *Communist Party* case, not only the majority but two of the dissenters agreed that the Board's determination concerning the character of the Communist Party was constitutional. 367 U.S. at 174–175, 191.

As to the Fifth Amendment, no issue is even raised insofar as the Act only gives the Board the power to determine the character of organizations.

B. The registration and disclosure provisions of the Act are also constitutional.

1. The *Communist Party* case is controlling that these provisions do not violate the First Amendment. There, this Court upheld, with two of the dissenters agreeing, these same provisions of the Act as applied to Communist-action organizations against attack based on the First Amendment. 367 U.S. at 88–103, 174–175, 191. Since petitioner is, by definition and as shown by the record, in effect a subsidiary of the Communist Party, there is no basis for distinguishing this case. Indeed, the constitutionality of the disclosure provisions as applied to Communist fronts is, if anything, clearer since they do not require disclosure of the organization's members.

Secondly, independently of the *Communist Party* case, the First Amendment does not prohibit Congress from requiring registration of, and disclosure of information by, domestic organizations which are indirectly but clearly dominated by foreign agencies whose purpose it is to establish a Communist dictatorship in this country. The freedoms guaranteed by the First Amendment are not absolute. Even direct limitations on those freedoms may be permissible where clearly necessary to the effectuation by Congress of an end within its power to bring about. *A fortiori,* those freedoms may be indirectly restrained in proper circumstances.

This Court has many times sustained disclosure statutes which placed indirect restraints on freedom of speech or of the press, where the statute's objective lay within the power of Congress or a state to bring about, and the restraint was a necessary and appropriate concomitant of the exercise of the power. Examples are the Hatch Act (*United Public Workers* v. *Mitchell,* 330 U.S. 75), the Federal Regulation of Lobbying Act (*United States* v. *Harriss,* 347 U.S. 612), and the Federal Corrupt Practices Act (*Burroughs* v. *United States,* 290 U.S. 534).

The various evils at which the statutes thus sustained were aimed, grave as they were, are dwarfed in comparison to the evil at which the Act at bar strikes—the threatened destruction of our constitutional form of government and the subjection of the nation to the domination and control of a foreign dictatorship. Indeed, this Court has repeatedly recog-

nized the great seriousness of the evil and, because of its conspiratorial nature and avowal of illegal means, has refused to treat the Communist Party as an ordinary political party. *E.g., Galvan* v. *Press,* 347 U.S. 522; *Barenblatt* v. *United States;* 360 U.S. 109. While Communist fronts, unlike the Communist Party, do not directly advocate forcible overthrow, they are designed to make a significant contribution to this ultimate result. They support various Communist positions, provide sources for the recruitment of new Party members, and give financial, legal, and other support to the Party itself.

In the light of the evil involved, the registration requirements do not invalidly restrict free speech, press, or association. The rationale underlying this Court's decisions sustaining "disclosure" statutes is that it is in the interest of both free speech and free association that Congress and the public be adequately and correctly informed, at least where the dangers stemming from non-disclosure are serious. The device of registration and disclosure is therefore a reasonable measure to be applied to a subsidiary of the Communist Party, now that the Party has been found, after full hearing, to be directed and controlled by the Soviet Union and to be operating primarily to advance the objectives of the world Communist movement.

Petitioner contends that all it does is to pursue legitimate objectives, such as defending aliens and promoting changes in the immigration laws and therefore cannot be ordered to register. But this is not why petitioner comes within the Act. It must register

because it is controlled by, and operated primarily to give aid and support to, the Communist Party regardless what form its activities may take.

2. The definition of Communist-front organizations in the Act is not unconstitutionally vague under the First Amendment or the due process clause of the Fifth Amendment. This Court upheld a similar definition applicable to Communist-action organizations in the *Communist Party* case. 367 U.S. at 71, 82, 115. Unlike in *Cramp* v. *Board of Public Instruction,* 368 U.S. 278, and *Baggett* v. *Bullitt,* 377 U.S. 360, upon which petitioner relies, this is only a regulatory statute not involving the threat of criminal prosecution for past activities. Moreover, unlike in those cases, the Act here cannot possibly apply to mere incidental and innocent aid to the Communist Party.

The *amicus curiae* also claims that the evidentiary criteria in Section 13(f) are unconstitutionally vague. However, a new issue may not be injected into a case for the first time in this Court by an organization which is not a party. Moreover, this Court rejected a similar contention in the *Communist Party* case. 367 U.S. at 115. And finally, Section 13(f) merely states the kind of evidence the Board should consider; the exclusive test is in Section 3(4). Congress may provide in general terms concerning the kinds of evidence which an administrative agency should consider. *E.g., Opp Cotton Mills* v. *Administrator,* 312 U.S. 125.

3. Petitioner was not denied procedural due process because it was not allowed to relitigate whether the Communist Party is a Communist-action organization.

Since petitioner was found to be controlled by the Communist Party, the Party can be fairly said to have represented petitioner in the litigation resulting in the Party's final order to register. See *Hansberry* v. *Lee*, 311 U.S. 32, 42–43. The Party can relitigate its status at any time it chooses to register, under a provision which this Court has termed an "adequate means of relief." *Communist Party* v. *Subversive Activities Control Board, supra*, 367 U.S. at 87. If there were any constitutional unfairness in not allowing relitigation without the Party's registering, it is the Party, and not petitioner, which may claim denial of its rights.

4. The Board's definition of "organization" did not violate the First Amendment or the due process clause of the Fifth Amendment. First, this issue is not properly before the Court since it was not raised in the petition for a writ of certiorari. Second, no liability is being imposed on the national committee merely for associating with the local committees. The Board had ample evidence to find, as it did, that the national and local committees were part of a single organization.

5. The registration and disclosure provisions do not violate the self-incrimination clause of the Fifth Amendment.

a. This issue may not be raised here since it was not raised in the court below.

b. This Court held in the *Communist Party* case that a directly analogous issue relating to registration of a Communist-action organization was premature. 367 U.S. at 105–110.

c. Independent of the *Communist Party* case, it is clear that the self-incrimination issue is premature. First, the privilege applies only to natural individuals (*United States* v. *White,* 322 U.S. 694, 698), of whom there is none before the Court at this time. Second, the privilege must be personally and explicitly claimed (*e.g., Quinn* v. *United States,* 349 U.S. 155, 162) and there has been no claim of privilege thus far, and there may never be one. Third, it cannot justifiably be assumed at this time that a claim of privilege will inevitably be made, particularly since the Act requires disclosure only of the names of petitioner's officers and not members. Fourth, even assuming that a claim of privilege will be made and that, when made, it will be sustained this would make the order to register at most unenforceable, not void. Congress could remove the barrier to non-enforceability by a grant of immunity; and, in any event non-enforceability would not affect the disabilities which come into effect when an order to register becomes final.

d. If the Court decides that the issue is not premature, the privilege is not available to petitioner's officers. First, this Court held in *United States* v. *White,* 322 U.S. 694, that an officer of an organization who has custody of its records, if called upon to produce them pursuant to a subpoena, may not lawfully refuse even if they would tend to incriminate him personally. The rationale of this decision is not inapplicable on the ground that in that case physical records were in question, while the issue here is the compulsory submission of a registration statement containing the name of officers and a financial account-

ing. For this Court has held that officers may be required to file reports with administrative agencies even though this may incriminate them personally. *Baltimore & Ohio Railroad* v. *Interstate Commerce Commission,* 221 U.S. 612. The data required to be contained in the registration statement are reproductions of or extracts from organization records. Any valid privilege as to personal information can be claimed on the registration form. See *United States* v. *Sullivan,* 274 U.S. 259.

Second, even if an officer could invoke the privilege as to an organization's records, it is very likely that the claim would not be valid as to all petitioner's officers. The privilege presupposes a real danger of legal detriment arising from disclosure. *Rogers* v. *United States,* 340 U.S. 367. Here, Section 4(f) of the Act provides that the registration of any person under the Act may not be received in evidence against him in any criminal prosecution. There is no realistic possibility that registration would provide any leads to other evidence since petitioner has made no secret of at least many of its officers. But, in any event, a party under an obligation to perform a legal obligation has a duty to find someone to perform this obligation. It cannot be assumed that no attorney or other agent will be available.

ARGUMENT

INTRODUCTION

The heart of the Subversive Activities Control Act [11] is the requirement that the Subversive Activities

[11] The Act is analyzed in detail in Appendix A below.

Control Board determine whether organizations are Communist-action and Communist-front organizations as defined in the Act and, if they are found to be, that they should register with the Attorney General, should disclose the names of their officers and, in the case of Communist-action organizations, of their members, and should give financial accountings. A Communist-front organization is defined as any organization in the United States which is substantially dominated or controlled by, *and* which primarily operates to give aid and support to, a Communist-action organization (Section 3(4)). A Communist-action organization, in turn, is defined as an organization which is substantially dominated or controlled by "the foreign government or foreign organization controlling the world Communist movement" *and* which "operates primarily to advance the objectives" of that movement (Section 3(3)). The "world Communist movement" is that "world-wide revolutionary movement," whose purpose Congress found in Section 2 "is, by treachery, deceit, infiltration into the other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries hroughout the world through the medium of a world-wide Communist organization."

A Communist-front organization then, by definition, is controlled by the world Communist movement, indirectly but just as surely, as Communist-action organizations themselves. Moreover, Congress has explicitly found that Communist-action organizations

secretly operate to a substantial extent through Communist-front organizations in order to obtain support from persons who would not knowingly support Communist causes (Section 2(7)). Thus, to borrow an analogy from the field of corporations, Communist fronts are subsidiaries of Communist-action organizations, *i.e.*, the various Communist parties, which are subsidiaries of a world-wide holding company, *i.e.*, the world Communist movement. Congress was attempting in the Act to deal with the danger of this unified and disciplined movement as a whole.

Congress' determination to deal with Communist-front, as well as Communist-action, organizations is amply supported by the theory and use of Communist fronts.[12] After the Soviet Revolution, it soon became clear that Communist ideology would not quickly win the support of the workers of Europe and that other revolutions would not automatically occur. As a result, the world Communist movement decided to subvert existing worker, farmer, and other organizations and to start new organizations which would support Communist positions. This the Party has done not only in Europe but also in the United States in order to prepare the way for ultimate overthrow of the government by force if necessary.

The fronts have served several purposes for which Communist parties were inadequate. Since the front organizations could purport to be non-Communist, they made Communist views seem respectable to per-

[12] For a detailed history of the theory and use of Communist-front organizations, see Appendices B and C below.

sons outside the fronts who would not normally be receptive to Communism. For example, the fronts have attempted to arouse support for Soviet foreign policy such as the Soviet peace offensive after World War II. The fronts have also been sources for the recruitment of Party members since constant propaganda made members of the fronts increasingly receptive to Communist ideology. Finally, the fronts have served the Communist movement by collecting funds for it from non-Communists or by providing some service for the movement such as the legal defense of Party members, again largely at the expense of non-Communists.

The Board found that the Communist Party was a Communist-action organization and this finding was upheld by this Court. *Communist Party* v. *Subversive Activities Control Board,* 367 U.S. 1. In this proceeding, the Board found that petitioner was controlled by, and primarily operated to give aid and support to, the Communist Party and therefore was a Communist front under the Act. The Board's subsidiary findings demonstrate that petitioner is a typical front. It conceals its Communist control and purposes so as to attract non-Communist members. It vigorously supports Communist causes as if it were an independent organization in order to gain sympathy for Communism and to convert its own members to acceptance of Communism as such. And it directly supports the Communist movement by defending Communist leaders and members from deportation with funds largely obtained from non-Communist sources.

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As we shall show, the record fully supports these findings, and they, in turn, support the Board's ultimate conclusion that petitioner is a Communist front. But before discussing either these findings or the other grounds, statutory and constitutional, upon which petitioner challenges the Board's order, we think it would be helpful, in order to put the issues in proper context, to discuss the background of the Act, both generally and with respect to the particular provisions relating to Communist fronts.

I

THE BACKGROUND OF THE SUBVERSIVE ACTIVITIES CONTROL ACT

A. THE HISTORICAL BACKGROUND OF THE ACT

Just as an examination of the problem or evil which evoked the passage of legislation is a sound guide to its purposes and meaning (*Holy Trinity Church* v. *United States,* 143 U.S. 457, 463–465; *Apex Hosiery Co.* v. *Leader,* 310 U.S. 469, 489–493), so too a fair appreciation of the nature of the problem which led to the enactment of a statute is indispensable to proper evaluation of the soundness of challenges to its constitutionality. Cf. *American Communications Assn.* v. *Douds,* 339 U.S. 382, 388–389; *Dennis* v. *United States,* 341 U.S. 494, 562–566 (Mr. Justice Jackson, concurring). Consideration of the problems which called the legislation involved here into being will tend to show, we believe, the reasonableness of the basic scheme of the Act, particularly as applied to petitioner, and thus to refute the contention that it arbitrarily invades basic constitutional liberties.

Rarely has there been a more intense study of methods of dealing with a particular evil than that which preceded and produced the Subversive Activities Control Act of 1950.[18]

Following World War I, the powerful totalitarian political movements of Communism, National Socialism, and Fascism developed in Russia, Germany, and Italy. The success of the so-called Fifth-Column groups in Europe during the 1930's indicated the vulnerability of republican forms of government to conspiracies guided from outside the country involved, ready to seize total power by illegal means as soon as the time became propitious. See Loewenstein, *Legislative Control of Political Extremism in European Democracies,* 38 Colum. L. Rev. 591–622, 725-744. By 1940 it was clear that these highly organized and disciplined totalitarian movements, financed and directed from abroad and promoted domestically by secret dedicated action-groups, involved much greater danger to the democracies than had earlier individual exponents of political violence. The danger became one, not of ideas and philosophies, but of external aggression aided by local covert groups serving the aggressive aims of their foreign principals.

As early as 1930, investigations were conducted by Congressional committees into Communist propaganda and activities in the United States and considerable testimony directed to this issue was adduced

[18] There is a more detailed discussion of much of this material in the government's brief in this Court in *Dennis* v. *United States*, Oct. Term 1950, No. 336, pp. 174; *et seq.*

in various cities of the United States. See *Internal Security Manual,* Sen. Doc. No. 47, 83d Cong., 1st Sess. (1953) 216–217. In 1934, the investigation was extended to Nazi propaganda activities. *Id.* at 217–218. During the years 1930 to 1940, it was shown that the alien political philosophies of the right and left had created divided loyalties in this country. For example, William Z. Foster, the leader of the Communist Party of the United States, testified in 1931 that the "more advanced workers" in this country "look upon the Soviet Union as their country." Hearings before a House Special Committee To Investigate Communist Activities in the United States, 71st Cong., 2d Sess., part I, vol. 4, p. 384.

Also significant were the 1939 hearings before the House Committee on Un-American Activities, in which the testimony of such witnesses as Benjamin Gitlow and Earl Browder, as well as a mass of documentary evidence, tended to show the subservience of the American Communist Party to the Soviet Union. Hearings before a House Special Committee on Un-American Activities, 76th Cong., 1st Sess., vol. 7, *passim.* Congress had before it the *Theses, Statutes, and Conditions of Admission to the Third (Communist) International,* adopted at the Second World Congress of the Communist International in 1920. *Id.,* vol. 7, pp. 4668–4671. Among the "conditions" which a party aspiring to join the International was required to accept were: willingness to combine illegal with legal work to advance the objective of a world proletarian dictatorship (condition 3); willingness to infiltrate and carry on propaganda and agitation in military

organizations (condition 4); renunciation of "social patriotism," and systematic demonstration to the working class of the necessity of a "revolutionary overthrow of capitalism" (condition 6); recognition of the necessity of "complete and absolute rupture with reformism and the policy of the 'centrists'" (condition 7); willingness to carry on "systematic and persistent Communist work in the labor unions" and to form "Communist nuclei" within unions to the end that they should be "[won] over * * * to Communism" (condition 9); the maintenance of "iron discipline" on the basis of the "principle of democratic centralization" to the end that the "party centre" may enjoy "the confidence of the party membership" and be "endowed with complete power" over it (condition 12); recognition of the "binding" force of all resolutions of congresses of the Communist International and of its Executive Committee on "all parties joining the Communist International" (condition 16); and exclusion from the party of all members who "reject in principle the conditions and theses" (condition 21).

Congress was informed that these "conditions" governed the relationship between the American Communist Party and the International. Hearings before a House Special Committee on Un-American Activities, 76th Cong., 1st Sess., vol. 7, pp. 4308–4311, 4667–4668. For example, in 1929, the Executive Committee of the International, under the personal leadership of Stalin and Molotov, decided upon and enforced the replacement of the Lovestone-Gitlow leadership of the American Party by that of Foster and Browder.

When Lovestone and Gitlow defied the Executive Committee, Stalin made a speech reminding them of the fate of Trotsky and Zinoviev (*id.* at 4432),[14] and the Party's organ, the *Daily Worker,* stated editorially on June 1, 1929, that (*id.* at 4671):

> Comrades Lovestone and Gitlow in their declaration of May 14 refused to accept the address or to carry it out, and even went to the length of stating that they would actively oppose it. They are thus entering upon a course leading toward an attempt to split the party, a course in violation of the 21 conditions and the statutes of the Comintern.

Thus, by 1939, there was a mass of oral and documentary evidence collected by the House Committee on Un-American Activities over the previous nine years, which demonstrated that both the Communist International and the Communist Party of the United States were devoted to the establishment of a proletarian dictatorship by force and violence, and that the American Communist Party was completely controlled both as to policy and leadership by the Soviet Union through the Communist International. See *Internal Security Manual,* Sen. Doc. No. 47, 83d Cong., 1st Sess. 216–219; see also H. Rep. No. 153, 74th Cong., 1st Sess. 21.

Congress endeavored to deal with this problem in several ways. In the portion of the Alien Registration Act of 1940, 54 Stat. 670, known as the Smith

[14] The full text of this speech is set forth in the Appendix to the Hearings before a House Special Committee to Investigate Communist Activities in the United States, 71st Cong., 2d Sess., part I, pp. 876–882.

Act—*i.e.*, Sections 2, 3, and 5 (now consolidated in 18 U.S.C. 2385)—it was made a criminal offense to advocate the overthrow of the Government by force and violence or to conspire so to advocate.[15] The problem of the dissemination of foreign propaganda was approached by the method of disclosure. In 1938, Congress enacted the Foreign Agents Registration Act, 52 Stat. 631, 22 U.S.C. 611-621, requiring the registration of any individual or organization acting as the domestic agent of a foreign principal and requiring information as to the identity of the principal and the terms of the contract. The committee reports on the bill which became that Act both stated as follows (H. Rep. No. 1381, 75th Cong., 1st Sess. 1-2; S. Rep. No. 1783, 75th Cong., 3d Sess. 1-2):

> Incontrovertible evidence has been submitted to prove that there are many persons in the United States representing foreign governments or foreign political groups, who are supplied by such foreign agencies with funds and other materials to foster un-American activities, and to influence the external and internal policies of this country, thereby violating both the letter and the spirit of international law, as well as the democratic basis of our own American institutions of government.
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> * * * * *

[15] The constitutionality of this provision, as applied to a conspiracy charge against eleven of the Party's national officers for the period from April 1, 1945, to July 20, 1948, was upheld in *Dennis* v. *United States*, 341 U.S. 494. The membership clause was held constitutional in *Scales* v. *United States*, 367 U.S. 203.

> This required registration will publicize the nature of subversive or other similar activities of such foreign propagandists, so that the American people may know those who are engaged in this country by foreign agencies to spread doctrines alien to our democratic form of government, or propaganda for the purpose of influencing American public opinion on a political question.
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> * * * * *
>
> We believe that the spotlight of pitiless publicity will serve as a deterrent ot the spread of pernicious propaganda. We feel that our people are entitled to know the sources of any such efforts, and the person or persons or agencies carrying on such work in the United States.

Various difficulties in the enforcement of the Foreign Agents Registration Act (see Report of the Institute of Living Law, 87 Cong. Rec. App. A4417–4419 (1941); Institute of Living Law, *Combating Totalitarian Propaganda: The Method of Exposure*, 10 Univ. of Chi. L. Rev. 107) resulted in its amendment by the Act of April 29, 1942, 56 Stat. 258, which strengthened the provisions and transferred the administration of the Act from the Secretary of State to the Attorney General. The Reports of the Attorney General to Congress on the Administration of the Foreign Agents Registration Act (which are required by 22 U.S.C. 621) detail the operation of that statute.

The purpose of Congress to expose the foreign origin of various propaganda activities was, however, not fully achieved, partly because of an increased tendency to bring information services under the

aegis of diplomatic immunity (see Report of the Attorney General on the Administration of the Foreign Agents Registration Act, 1945–1949, p. 8; 1950 Report, pp. 5–6; 1951 Report, pp. 6–7), and partly because of controversy as to the scope of the "agency" covered by the statute. See *Viereck* v. *United States*, 318 U.S. 236, 242; *United States* v. *German American Vocational League*, 153 F. 2d 860, 864 (C.A. 3), certiorari denied, 328 U.S. 833; *United States* v. *Peace Information Center*, 97 F. Supp. 255, 258–259 (D. D.C.). The necessity of proving the fact of agency within the context of a criminal trial made difficult the enforcement of the Act against organizations which concealed their operations and obscured the sources and nature of their foreign control.

On October 17, 1940, Congress passed the so-called Voorhis Act, 54 Stat. 1201 (now 18 U.S.C. 2386), requiring the registration, *inter alia*, of any organization "subject to foreign control which engages in political activity." The House Committee on the Judiciary, in its report on the bill which became the Voorhis Act, said with respect to the purposes of the bill (H. Rep. No. 2582, 76th Cong., 3d Sess. 1):

> Freedom of political expression is a fundamental principle of democracy. A serious problem arises, however, where political organizations exist in a democracy which are substantially controlled or directed by a foreign power and seek to pursue a policy in a democracy like the United States for the benefit of that foreign power.
>
> * * * * *

> The principle upon which this bill is based is that there is no place in a democracy for undercover political organizations. Without in any way interfering with freedom of political activity, the passage of this legislation would mean that it would be unlawful for any political activities, inimical to the constitutional government, to be carried on, unless the full facts concerning such activities are made known.

It soon became apparent that there were also difficulties in the enforcement of the Voorhis Act. See Institute of Living Law, *Combating Totalitarian Propaganda: The Method of Exposure,* 10 Univ. of Chi. L. Rev. 107, 122–133. Since religious, charitable, scientific, literary, and educational organizations were excluded from the Act's coverage, propaganda organizations could seek to avoid registration by styling themselves under one of the excluded categories. There was no express provision making the officers guilty if a corporation or association failed to register. In the case of a corporation or unincorporated association without funds for the payment of fines, there were no appropriate sanctions to enforce compliance. While it was originally anticipated that both the Communist Party and the German-American Bund would have to register under the Act (H. Rep. No. 2582, 76th Cong., 3d Sess. 2), the restricted meanings given to the terms "subject to foreign control" and "political activity" by the Act itself made avoidance of registration possible through the device of a claimed divorcement. For example, the Commu-

nist Party, at its 1940 convention, adopted a resolution which provided, *inter alia* (C.P. Ex. 13, p. 15):

> That the Communist Party of the U.S.A., in Convention assembled, does hereby cancel and dissolve its organizational affiliation to the Communist International, as well as any and all other bodies of any kind outside the boundaries of the United States of America, for the specific purpose of removing itself from the terms of the so-called Voorhis Act, which originated in the House of Representatives as H.R. 10094, which has been enacted and goes into effect in January 1941, which law would otherwise tend to destroy, and would destroy, the position of the Communist Party as a legal and open political party of the American working class * * *.

In addition, the Voorhis Act provided no adequate administrative machinery to search out the true facts regarding control of foreign dictatorships and the real objectives of domestic organizations believed to be subversive but which veiled their true ends behind a facade of respectability. That Act was addressed only to the formal, overt aspects of a particular group, and failed to reach the true but secret purposes which lay beneath the surface and which constituted the real threat to the security of the United States. See Institute of Living Law, *Combating Totalitarian Propaganda: The Method of Suppression*, 37 Ill. (Northwestern Univ.) L. Rev. 193, 204–205; Cohen and Fuchs, *Communism's Challenge and the Constitution*, 34 Corn. L.Q. 182, 201. Indeed, the

Voorhis Act prompted the Party to hide its propaganda through the use of fronts. Moore, *The Communist Party of the USA: An Analysis of a Social Movement*, 39 Am. Pol. Sci. Rev. 31, 36–37.

After the cessation of hostilities in World War II, events occurred and facts were uncovered which tended to show more clearly the nature and dimensions of the danger. Communist regimes were established in several countries other than the Soviet Union, and elsewhere Communist parties attained considerable strength. The methods by which these regimes seized power—for example, in Czechoslovakia—were known and noted in this country.[16] Moreover, there came to light direct evidence of espionage in Canada, Great Britain, and the United States. In 1949, after a protracted trial, Eugene Dennis and ten other leaders of the Communist Party were found guilty of violating the Smith Act, and the evidence produced at the trial furnished further proof of the attitudes and actions of the Party's top ranks, and their relationship to the Soviet Union. The convictions were affirmed, with an exhaustive opinion by Judge Learned Hand, on August 1, 1950, 183 F. 2d 201 (C.A. 2), slightly less than two months before the final enactment of the Act involved here. This Court later affirmed the Second Circuit, without finding it necessary to review the sufficiency of the evidence. *Dennis* v. *United States*, 341 U.S. 494.

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[16] Some details of this history are set forth in the government's brief in *Dennis* v. *United States*, No. 336, Oct. Term 1950, pp. 199–203.

Thus, Congress had reason to believe, when it passed the Act in September 1950, that there remained in existence a world Communist movement which endangered the security of the United States.[17] This was the problem with which Congress undertook to deal in the Subversive Activities Control Act of 1950.

B. THE BACKGROUND OF THE COMMUNIST-FRONT PROVISIONS OF THE ACT

When Congress passed the Subversive Activities Control Act, it had considerable information concerning the important role of front organizations in Communist techniques.[18] William Green, the president of the American Federation of Labor, described the danger from Communist-front organizations before the House Committee on Un-American Activities (Hearings on H.R. 1884 and H.R. 2122, 80th Cong., 1st Sess. 48):

> The Communist Party of the United States has generally constituted but a small proportion of Communist activity in this country. The standard Communist technique is the technique of indirection and infiltration. Many organizations, sponsored by well-meaning but ill-informed men and women prominent in the community, the academic world, and even in church life, have been created for the sole purpose of providing a respectable front for fur-

[17] See, in addition to the materials referred to in the text, *The Strategy and Tactics of World Communism* (Report of the House Foreign Affairs Committee's Subcommittee No. 5 on National and International Movements), H. Doc. No. 619, 80th Cong., 2d Sess. 3-4.

[18] The history of Communist-front organizations both in the United States and in the rest of the world is described in some detail in Appendix B below.

thering Communist aims and purposes. Other organizations, completely non-Communist in origin, have been captured by Communists who, by infiltration, rigid discipline, and tireless persistence, would succeed in placing their candidates in key positions and eventually gain control.

These devious techniques and covert tactics make it plain that the task of combating communism is by no means simple. Communists are aware of the fact that the tenets of communism are repugnant to the vast majority of Americans. Hence their reliance on indirection and concealment and their constant endeavor to confuse and mislead. By changing their policy or "party line" at will, they have not hesitated to shift and even completely reverse their objectives overnight if that would gain them a temporary strategic advantage. If we are to reach to the roots of Communist penetration into the American community we must be ready to recognize the complex and intricate nature of the problem with which we are confronted.

J. Edgar Hoover likewise described Communist fronts (*id.*, part II, p. 41):

The united-front program of the Communist Party was launched at the seventh world congress of the Communist International in 1935. The Communist Party in the United States immediately took up the program and a systematic plan was worked out of infiltrating existing organizations with Communists.

For the most part, front organizations assumed the character of either a mass or membership organization or a paper organization.

> Both solicited and used names of prominent persons. Literally hundreds of groups and organizations have either been infiltrated or organized primarily to accomplish the purposes of promoting the interests of the Soviet Union in the United States, the promotion of Soviet war and peace aims, the exploitation of Negroes in the United States, work among foreign-language groups, and to secure a favorable viewpoint toward the Communists in domestic, political, social, and economic issues.
>
> The first requisite for front organizations is an idealistic sounding title. Hundreds of such organizations have come into being and have gone out of existence when their true purposes have become known or exposed while others with high-sounding names are continually springing up.
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> * * * * *
>
> * * * I feel that this committee could render a great service to the Nation through its power of exposure in quickly spotlighting existing front organizations and those which will be created in the future.

Dr. Emerson Schmidt, representing the Chamber of Commerce, after testifying concerning the danger from Communist fronts (*id.*, part I, pp. 96–97), recommended (*id.* at 145):

> The Department of Justice should make public at least twice a year a certified list of Communist-controlled front organizations and labor unions.[19] * * *

[19] The Department of Justice did start to publicize such a list in 1947. [redacted] 341 U.S. 123. See p. 103 below.

The front organization should be clearly defined. Attorney General Francis A. Biddle has referred to them as organizations:

"Represented to the public for some legitimate reform objective, but actually used by the Communist Party to carry on its activities, pending the time when the Communists believe they can seize power through revolution."

Similarly, Donald Richberg, an attorney agreed with proposed legislation which would require Communist-front organizations to disclose their true purposes (Hearings on H.R. 4422 and H.R. 4581 before the Subcommittee on Legislation of the House Committee on Un-American Activities, 80th Cong., 2d Sess. 78):

A secret organization is really a characteristic of most of the so-called Communist front organizations. They appear to be open and aboveboard, but, as a matter of fact, the sources of their income [are] sometimes a bit uncertain; the sources of their policies and programs are uncertain. They are often left very vague, so that the people join with the notion that a broad statement of principles represents what this organization intends.

* * * * *

In other words, I think if you took a good deal of the secrecy out of these organizations you would reach a good deal of their harm.

It is my impression, just simply from people whom I know, that a considerable portion of the membership of the Communist front organizations is quite ignorant of the real purpose; they are befuddled.

* * * * *

> So that it seems to me this whole question of taking off the secrecy and shedding the light here would help meet the problem of the Communist front organizations, because it would very soon get to be either a Communist organization or no organization.

C. THE IMMEDIATE EVOLUTION OF THE ACT

The Subversive Activities Control Act was the final distillate, after more than two years of study, of a number of different bills. Efforts were made to remove objectionable features from early drafts and to define with precision the terms employed without leaving the remedial legislation vulnerable to the kind of calculated avoidance that had been the prime weakness of previous registration statutes.

The so-called "Mundt-Nixon" bill (H.R. 5852, 80th Cong., 2d Sess.) was introduced in the House and referred to the Committee on Un-American Activities on March 15, 1948. 94 Cong. Rec. 2893. As amended and reported out, Section 8 of the bill provided for registration with the Attorney General by "Communist political organizations" and "Communist-front organizations." The Attorney General was authorized under Section 13, either on his own initiative or at the request of either House of Congress, to make an investigation and conduct hearings to ascertain whether an organization was required to register.

In its report on the bill, the Committee cited the fact that the Foreign Agents Registration Act of 1938 and the Voorhis Act of 1940, while "directed against both Nazis and Communists," had "proved ineffective

against the latter, due in part to the skill and deceit which the Communists have used in concealing their foreign ties." H. Rep. No. 1844, 80th Cong., 2d Sess., 5. It was also stated that, while the Alien Registration Act of 1940—*i.e.*, the Smith Act—made it a crime to advocate the overthrow of the Government of the United States by force and violence, and "[w]hile force and violence is without doubt a basic principle to which all Communist Party members subscribe, the present line of the Party, in order to evade existing legislation, is to avoid wherever possible the open advocacy of force and violence." *Ibid.* The report also indicated that ten years' investigation by the Committee had established (*id.* at 2):

> (1) That the Communist movement in the United States is foreign-controlled; (2) that its ultimate objective with respect to the United States is to overthrow our free American institutions in favor of a Communist totalitarian dictatorship to be controlled from abroad; (3) that its activities are carried on by secret and conspiratorial methods; and (4) that its activities, both because of the alarming march of Communist forces abroad and because of the scope and nature of Communist activities here in the United States, constitute an immediate and powerful threat to the security of the United States and to the American way of life.

The Senate Judiciary Committee, to which the House bill was referred, sought the advice of several prominent lawyers and the then Attorney General as to the constitutionality of the bill. See 94 Cong. Rec. 9028; Hearings on H.R. 5852 before the Senate Com-

mittee on the Judiciary, 80th Cong., 2d Sess. 415–488.[20] The principal objection of those who thought the bill had constitutional defects was that the bill used such terms as "Communist political organization" and "Communist-front organization" without adequately defining those terms, and therefore furnished the Attorney General with no definite legislative guide in determining whether an organization was required to register.

A new version of the bill was then prepared. See 94 Cong. Rec. 9028, 9029–9032. It more specifically defined in its Section 3 the terms "Communist political organization" and "Communist-front organization," and set forth in Section 7 the duty of such organizations to register with the Attorney General and to file annual reports. In place of the provision for an administrative determination by the Attorney General, the new bill (Sections 12, 13) provided for a Subversive Activities Board which was to make the determination as to whether a given organization was required to register, with further provision for judicial review of its determinations.

The redrafted bill—known as the "Mundt-Ferguson-Johnston" bill—was introduced in the First Session of the 81st Congress as S. 2311.[21] The opinions of various prominent attorneys were again solicited and the consensus appeared to be that the bill met the

[20] See also the analysis of the bill in Cohen and Fuchs, *Communism's Challenge and the Constitution*, 34 Corn. L. Q. 182–219, 352–375.

[21] S. 2311 evolved after extensive hearings before a subcommittee of the Senate Judiciary Committee from S. 1194 and S. 1196, which were originally introduced in the 81st Congress.

constitutional objections as to vagueness and at the same time avoided the weaknesses of prior legislation. S. Rep. No. 1358, 81st Cong., 2d Sess. 7, 16–17.

Both the House and Senate committee reports reemphasized the pressing need for bringing Communist organizations out in the open through the medium of registration requirements. H. Rep. No. 2980, 81st Cong., 2d Sess.; S. Rep. No. 2369, 81st Cong. 2d Sess.; S. Rep. No. 1358, 81st Cong., 2d Sess. The House committee report reiterated that prior legislation directed to this end had been ineffectual against the Communist Party itself, and cited the fact that 30 of the 70 major countries of the world had outlawed the Communist Party. H. Rep. No. 2980, 81st Cong., 2d Sess. 2. The report further noted, however, that the Committee had rejected proposals to outlaw the Communist Party or to make membership therein illegal *per se*.

The Internal Security Act, of which the Subversive Activities Control Act is a constituent part (Title I), was passed on September 23, 1950, over the President's veto.

II

THE BOARD CORRECTLY FOUND THAT PETITIONER IS A COMMUNIST-FRONT ORGANIZATION AS DEFINED IN THE ACT

Section 3(4) of the Act defines a Communist-front organization as any organization which is (1) "substantially directed, dominated, or controlled by a Communist-action organization" (the control component) and (2) "is primarily operated for the purpose of

giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement" (the aid component). The Board found, on the basis of a full hearing, that petitioner was controlled by, and primarily operated to give aid and support to, a Communist-action organization, *i.e.*, the Communist Party (R. 66).

Petitioner attacks this determination on three nonconstitutional grounds. First, it claims that the Board misconstrued the Act as to both the control and aid requirements. Second, it contends that the evidence is not sufficient to support the Board's findings. And third, it objects to the limitation of petitioner's cross-examination of a government witness. While most of petitioner's contentions are phrased as challenges to the Board's interpretation of the Act, the Board and petitioner disagree mainly about the evidence rather than about the interpretation of the Act. Moreover, most of these contentions involve trivial points which, whatever their merits, would not require overturning the Board's order and the decision of the court below.

A. THERE IS NO OCCASION FOR A SECOND JUDICIAL REVIEW OF THE BOARD'S FACTUAL FINDING THAT PETITIONER IS A COMMUNIST-FRONT ORGANIZATION

The evidence in this proceeding consists of some 7,000 typewritten pages of testimony from 27 witnesses and more than 281 exhibits presented by the government and 237 by petitioner (R. 16). Its presentation extended over some nine months. The exhibits consisted largely of copies of petitioner's offi-

cial publications. The oral testimony covered to a large extent activities of both petitioner and the Communist Party in which the witnesses participated or of which they otherwise had personal knowledge. Nine of the witnesses for the Attorney General were former members of the Communist Party; and several of them had also been active in petitioner.

On this evidence, the Board found that petitioner is a Communist-front organization as defined in the Act and, as such, required to register (R. 66). The Board explained the grounds of this determination in an exhaustive report (R. 15–66). The court of appeals remanded the case to the Board to allow petitioner to introduce evidence that the testimony of a witness for the government was false (R. 72). After hearing this evidence, the Board issued a new report on reconsideration which concluded that the witness' testimony was true and affirmed its earlier order (R. 72).

The court of appeals, applying particularly strict standards (R. 73–74) and making a thorough review of the evidence, concluded that the Board's findings were "well founded" and affirmed the Board's order (R. 71–84). It stated that there was ample evidence for the Board to find that petitioner's national organization was headed by members of the Communist Party; that the local committees were "associated together for joint action" with the national organization and therefore constituted a single "organization" as defined in the Act (Section 3(2)); that the local committees were run by Party members; and

that, consequently, petitioner was "substantially directed, dominated, or controlled by a Communist-action organization" Section 3(4) (A)). The court of appeals further concluded that the evidence fully supported the Board's finding that petitioner operated primarily to give aid and support to the Communist Party (Section 3(4)(B)).

Within broad limits, most of petitioner's non-constitutional arguments relate to matters which are largely within the discretion of the Subversive Activities Control Board. It is well established that the construction of the statute by the agency which administers it is entitled to considerable weight. See, *e.g., National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U.S. 111. In the *Communist Party* case, this Court held that "[s]ince the determination that an organization is or is not a Communist-action organization is largely a matter of working out of legislative policy in multiform situations of potentially great variety, the 'construction' of the statute which ensues from its application to particular circumstances by the administrative agency charged with its enforcement is to be given weight by a reviewing court." 367 U.S. at 40–41.

We submit that the Board's findings of fact are entitled to even greater weight. *E.g., National Labor Relations Board* v. *Link-Belt Co.*, 311 U.S. 584, 587; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U.S. 261, 271. Moreover, Section 14(a) of the Act provides that, where review of a Board order is sought:

> The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari. * * *.

Relying on a similar provision in the Taft-Hartley Act, this Court stated in *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U.S. 498, 502-503:

> The same considerations that should lead us to leave undisturbed, by denying certiorari, decisions of Courts of Appeals involving solely a fair assessment of a record on the issue of unsubstantiality, ought to lead us to do no more than decide that there was such a fair assessment when the case is here, as this is, on other legal issues.

This well-established principle was expressly applied to the Subversive Activities Control Act in the *Communist Party* case (367 U.S. at 69):

> We see no reason why still another court should independently reappraise the record. We have declined to do this in the case of other agencies as to whom reviewing power on the facts has been vested in the Courts of Appeals, and we find no purpose to be served in departing now from this settled policy of appellate review.

Finally, this Court also made clear in the *Communist Party* case that the Board has broad discretion to determine both the credibility of witnesses and the admissibility of evidence. In that case, the government by mistake failed during the proceedings before the Board to produce certain allegedly inconsistent statements previously made by a government witness.

When the statements were discovered, the witness could not be recalled for cross-examination on the basis of them since he was then too sick to testify. This Court refused to overrule the Board's determination not to strike the witness' testimony. The Court concluded that the weight to be given the testimony "can best be answered by those entrusted with ascertaining the fact; that is, the tribunal that conducts the hearing and passes judgment on the reliability of the witness in light of his total testimony and its relation to the [whole record]. Wide discretion would be left to a trial judge and not less must be left to an agency like the Board in a matter of this kind—a matter of adjusting the process of inquiry to the exigencies of a particular situation as they appear to administrators immediately acquainted with the course of proceedings." 367 U.S. at 28-29.

In short, there is no occasion for this Court to repeat the scrutiny given the lengthy transcript and numerous exhibits by the court below for the purpose of reappraising and re-evaluating the exidence and redetermining its sufficiency to support the Board's findings and order. This Court need do no more, as to petitioner's nonconstitutional contentions, than to satisfy itself that the court of appeals reasonably construed the statute and made a fair assessment of the record. That the court of appeals did so, we submit, is evident from its opinion. In any event, as we will now show, the Board and the court below correctly applied the statutory definition of a Communist-front organization to the evidence in this case.

B. THE BOARD AND THE COURT BELOW PROPERLY CONSTRUED AND APPLIED THE CONTROL COMPONENT OF SECTION 3(4)

Petitioner makes numerous attacks on the Board's findings concerning its control by the Communist Party. Before discussing those contentions, it is important to note that the Court's holding in the *Communist Party* case—that a reviewing court must give weight to an administrative agency's decision not only in determining the facts but in the construction of its statute—specifically involved the control component of Section 3(3) of the Act. In so holding, the Court quoted from *Rochester Telephone Corp.* v. *United States*, 307 U.S. 125, 145–146, which involved the meaning of control by one carrier of another under the Federal Communications Act:

> This is an issue of fact to be determined by the special circumstances of each case. So long as there is warrant in the record for the judgment of the expert body it must stand.

The same equally applies to the control component in Section 3(4).

1. The evidence supports the Board's finding that petitioner was controlled by the Communist Party

a. In the *Communist Party* case the Court defined subjection to control, for the purpose of the Act, as "a disposition unerringly to follow the dictates [of the controller], not by the exercise of independent judgment on the intrinsic appeal that those dictates carry, but for the reason that they emanate from that [controller]." 367 U.S. at 39–40. Petitioner contends

(Br. 96–97) that the record contains no evidence that petitioner received dictates from the Communist Party; instead, it says that the evidence shows that the organization was governed by annual conferences open to the public.

Petitioner fails to note that the Court went on in the *Communist Party* case to explain more fully its interpretation of the control component of Section 3(3). The Court specifically stated that control did not require "the sort of enforceable power over the organization's members which an employer has over an employee * * *." 367 U.S. at 40. Instead, the Court said that control "may also consist of other incidents which assure that the organization will unquestioningly adhere to the line of conduct appointed for it." *Ibid.* Among these incidents, the Court suggested subjection of the leadership of the controlled organization to the personal discipline of the controlling organization and allegiance owed by the controlled organization's leaders to the controlling organization.

There can be no doubt that the Court's definition of control in the *Communist Party* case is met here. The evidence which is described in the Statement above (pp. 4–13), shows that petitioner arose from an organization which was the American branch of an organization with headquarters in Moscow and which within the United States was controlled by a "Communist fraction" and a Party official. The executive secretary and dominant figure of petitioner from 1941 until his death in 1959 was Abner Green, who

was a member of the Communist Party [22] and was chosen by it to run petitioner. The second most important person in petitioner was Harriet Barron, the administrative secretary, who was also a Party member. Both Green and Miss Barron participated actively in Party affairs and carried out Party policies in running petitioner. Dorothy Strange, the naturalization aid director, was also a Party member and was working for the Party when participating as an officer of petitioner.

The evidence showed that the local committees [23] of petitioner were, at least in large part,[24] run by members of the Communist Party. In addition, there was testimony that one such local committee was started by a Party member who was assigned by the Party to this task, received instructions from Party officials, and reported her progress to them.

In short, petitioner was run almost entirely by members of the Communist Party. While there was evidence that these members were actually carrying out Party orders and policies within petitioner, such evi-

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[22] Contrary to petitioner's suggestion (Br. 88), there was explicit testimony that Green was a Party member (Tr. 978–985, 991–996, 1007, 1194–1195). Petitioner also says (Br. 89) that various evidence tending to support this specific testimony was hearsay. However, administrative agencies can properly rely on hearsay to support other direct evidence (see p. 87 below).

[23] We shall show below (pp. 93–97) that the local committees were part of petitioner and not separate organizations.

[24] No evidence was introduced concerning the officers of several of the local committees (see p. 12, note 8 above). As to the committees concerning which there was evidence, all were led by Party members.

dence was unnecessary. As Congress found in Section 2(15) of the Act—a finding which was upheld in the *Communist Party* case (367 U.S. at 7–8, 96–97)—members of the Communist Party act under strict discipline. Thus, it is plain that petitioner's leaders had an allegiance, and were under discipline, to the Communist Party and, consequently, petitioner was controlled by the Party, within this Court's definition of control.[25]

b. Petitioner contends (Br. 97) that the organization is run by the annual conferences, which were open to anyone, and that there was no evidence that they were subject to Party control. However, both by petitioner's constitution and in practice, the annual conference only decided general programs and left the "full responsibility" for carrying them out to petitioner's officers (Tr. 4873–4874; A.G. Ex. 37; P. Ex. 88; R. 55–56).[26] Moreover, the procedure at the annual conferences was such as to make it impossible for such gatherings actually to control petitioner. Each year the executive secretary issued several thousand printed "calls" for the annual conference, which were sent to interested organizations and individuals, and the conference was announced in the press (Tr. 4875). Any person interested could attend

[25] Petitioner states (Br. 97) that Communist doctrine was never discussed at petitioner's meetings. This is hardly surprising since the essential element of a Communist-front is that it covertly carries out Party goals so as to attract non-Communist support (Section 2(7)). See also Appendices B and C below.

[26] This is true not only for the national organization but for the local committees as well (*e.g.*, A.G. Ex. 62; R. 57).

the conference, register, and vote on whatever matters came before the meeting, including the election of officers for the next year (Tr. 4873–4875). The persons attending a conference in any one year depended largely upon the city where it was held. The annual conferences limited their work to holding committee or panel meetings, passing resolutions and declarations of principle, and electing officers. When a conference was over, its authority ended and it handed over the task of carrying on the Committee's work to the executive secretary (Tr. 4289). As the court below held (R. 75), "the annual conferences were perfunctory, as such boards and conventions so frequently are in unincorporated associations, and the real direction and control were in the hands of the chief executive officer."

c. Petitioner strongly attacks (Br. 87–88) the testimony of John Lautner, a government witness, that he (Lautner) and Avro Landy were designated early in 1942 [37] by the Communist Party to decide whether Abner Green, who was a Party member, should take over from Irving Novick, who also was a Party member, as the leader of the American Committee; that Lautner, Landy, Green, and Novick had a meeting in the Party building; and that Lautner and Landy decided in favor of Green, who then became the head of the Committee (Tr. 991–996; R. 29). Green denied that any such conference was held,

[37] Since Lautner did not claim to be able to fix the date exactly (Tr. 995), his testimony is not inconsistent with petitioner's contention (Br. 87–88) that Green became executive secretary in 1941.

and said that, according to the records of petitioner's emergency conference of December 29, 1941, he had been elected at that conference to succeed Curt Swinburne as executive secretary, and that Novick left the Committee at that time for other reasons (Tr. 4822–4850). If this were all the evidence, the question would be merely one of credibility, since the hearing examiner was not compelled to believe petitioner's chief official or its own records. The hearing examiner, who saw and heard both Lautner and Green on the witness stand, believed Lautner. He found that "on or about December 29, 1941, Green became the head or leader, as well as the secretary, of the respondent [American Committee] as the result of a decision of the Nationality Groups Commission of the Communist Party" (Recommended Decision, pp. 30–31). The Board and the court of appeals approved this finding (R. 28, 76).

In addition, there was testimony by Green himself which corroborated Lautner. Green testified that Swinburne had been secretary of petitioner for only about a year, from October 1940, to December 29, 1941, and before the latter date he had not been functioning as secretary for "several months" (Tr. 4823–4824, 4841–4842, 4846–4847); that Swinburne, as executive secretary, and Novick, as naturalization aid director, received the same salary, and Green a smaller salary (Tr. 4863, 6442); that Novick had been acting executive secretary from the latter part of 1938 for a year and a half or two years (Tr. 4822–4823); and that, as of December 1941, there was a question whether Novick should succeed Swinburne as secretary (Tr. 4843). Thus, Green's

testimony suggested that Novick had been acting as executive secretary prior to Green's taking the post—a fact which would fully explain Lautner's testimony on this point.[25]

d. Finally, petitioner contends (Br. 88–89, 90) that the evidence concerning Green's and Mrs. Barron's connection with the Communist Party is stale because it relates to the period before 1950. Such evidence is, however, important in two ways. First, it indicates that petitioner was controlled by the Party at least up to 1950. This, in turn, suggests that control continued until the date of the hearing only five years later, particularly since there was no evidence of loss of control and there was other evidence that petitioner had connections with Party leaders as late as 1953 (Tr. 1547, 1597–1600; R. 30). Second, this evidence indicates that Green and Mrs. Barron themselves continued, again in the absence of evidence to the contrary, to be Party members after 1950.

The importance of evidence concerning the past in a case such as this is well established. The court of appeals succinctly stated in *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531, 570 (C.A. D.C.):

> The past is clearly pertinent to the present nature of a person or an organization. Surely

[25] Petitioner likewise attacks (Br. 91) the findings of the Board that petitioner's naturalization aid director was a member of the Communist Party on the ground that the Board did not believe Green's testimony to the contrary. However, the Board was obviously not required to believe Green. Mary Markward testified that Mrs. Strange was a district officer of the Party and was working for the Party as an officer of petitioner (Tr. 3157, 3160, 3163, 3968; R. 41).

> a person's education and experience are pertinent to his present nature. The same is true of an organization. As a matter of fact it is rarely, if ever, possible to prove present nature by some instantaneous, contemporaneous fact, totally ignoring the whole of the past. Not only is the past clearly pertinent, it may be quite material to a determination of present nature. Whether it is material depends upon whether there is affirmative evidence of a departure from the established past. In the ordinary affairs of life and in ordinary litigation, if a person or an organization is shown to have had over many years a certain policy and program, and no more is shown, the conclusion is clearly indicated that he or it has the same policy and program in the present.

In affirming the decision below, this Court agreed (367 U.S. at 69):

> Where the current character of an organization and the nature of its connections with others is at issue, of course past conduct is pertinent. Institutions, like other organisms, are predominantly what their past has made them. History provides the illuminating context within which the implications of present conduct may be known.

Accord, *Federal Trade Commission* v. *Cement Institute,* 333 U.S. 683, 703–706; *United States* v. *Oregon Medical Society,* 343 U.S. 326, 333; *United States* v. *Reading Co.,* 253 U.S. 26, 43–44; *Standard Oil Co.* v. *United States,* 221 U.S. 1, 74–76; *United States* v. *Dennis,* 183 F. 2d 201, 231 (C.A. 2), affirmed, 341 U.S. 494.

2. The evidence supports the Board's subsidiary findings concerning the control component

Petitioner attacks (Br. 84–86, 91–93) the Board's subsidiary findings relating to the Communist Party's control of petitioner. The findings were made pursuant to Section 13(f), which directs the Board to "take into consideration" four factors in determining whether an organization is a Communist front. Petitioner challenges the Board's rulings on two of the factors.

a. Petitioner first claims the Board misapplied Section 13(f)(1), which directs the Board to consider "the extent to which persons who are active in [an organization's] management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, any Communist-action organization * * *." The Board found that petitioner's "entire organization (national and locals) is effectively under the management, direction and supervision, and controlled by members and representatives of the Communist Party" (R. 35).

Petitioner argues (Br. 85–86) that the Board did not find that the Communist Party members who ran petitioner were representatives of the Party at the time of the hearing. Petitioner relies on the Board's statement that Green "*has served* as a representative of the Communist Party in operating respondent" (emphasis added) (R. 31). Since the Board explicitly found that at the time of the hearing, Green was still a Party member (R. 31), it is clear that "has served" means that throughout this period Green

was both petitioner's executive secretary and a member of the Communist Party. This finding is amply supported by evidence that Green became executive secretary at the direction of the Party, remained a Party member, and carried out Party policies in running petitioner (see pp. 6–7, 15, 62, note 22, 63–66 above).

Petitioner says (Br. 86) that the Board did not find that Mrs. Barron and Miss Strange, other officers of petitioner, were representatives of the Party. The Board found, however, that petitioner's entire organization was run by "members and representatives" of the Party (R. 35.) Thus, the Board found that the members of the Party who were active in petitioner to be the Party's representatives. This conclusion is supported by Congress' finding that all Party members are under strict discipline (Section 2(15)). Moreover, there was testimony that Mrs. Barron carried out Party policies as an officer of petitioner and that Miss Strange, who was a local Party officer, had herself admitted that her work in petitioner was for the Party's benefit (Tr. 1005, 3160–3163; R. 40, 41).

b. Petitioner also contends (Br. 91–93) that the Board wrongly applied Section 13(f)(2), which directs the Board to consider "the extent to which its support, financial or otherwise, is derived from any Communist-action organization * * *." The Board found that "throughout respondent's existence there has been a clear intent and purpose of the Communist Party to aid, promote, and support respondent, and we find further that the aid and support given by or

emanating from the Party has been substantial" (R. 64). Petitioner claims that there was not a sufficient showing of support to show control by the Communist Party.

The Act does not require that the Board have extensive evidence, or to make specific findings, concerning all the factors in Section 13 in order to determine that an organization is a Communist front. Instead, it directs the Board merely to take these factors into consideration; the sole tests are those set forth in Section 3(4). *Communist Party* v. *Subversive Activities Control Board, supra,* 367 U.S. at 14; cf. *id.* at 58, 61. There can be no doubt that an organization can be controlled by, and primarily operate to give aid and support to, another organization without the controlled organization receiving any support whatever from the controlling organization.

Here, however, the Board found that petitioner received substantial support from the Communist Party. This finding is amply supported by evidence that the Party gave petitioner some financial support, circulated petitioner's literature, sold tickets to petitioner's affairs and instructed its members to contribute financially to petitioner and to participate actively in petitioner's programs. See the Statement, pp. 19–20 above.

This support of petitioner by the Party constitutes some evidence relating to both components of the definition of a Communist-front organization. It is evidence of control since it is unlikely that the Party would support an organization over which it did not

have some control and, moreover, financial assistance frequently carries with it at least some power. It is also evidence of petitioner's aid and support of the Communist Party since it is not likely that the Party would be willing to support an organization not of considerable benefit to it. Although, standing alone this evidence would not demonstrate the petitioner's control by, or support of, the Party, the record here contains abundant other evidence showing such control and support. There is no reason to suppose that the Board gave improper weight to this finding.

C. THE BOARD AND THE COURT BELOW PROPERLY CONSTRUED AND APPLIED THE AID COMPONENT OF SECTION 3(4)

1. The aid component is satisfied by evidence that an organization gives aid and support to a Communist-action organization through activities which have no direct connection with overthrow of the government

a. Petitioner contends (Br. 37–49), and the dissenting opinion below agreed (R. 86–88), that the aid component of Section 3(4) requires proof that an alleged Communist front is giving aid and support to a Communist-action organization's efforts to overthrow the government of the United States by force and violence. If petitioner and the dissent below are correct, there is no doubt that the Board's determination was erroneous since petitioner did not engage in any activities directly involving forcible overthrow. We submit, however, that that construction of the Act is plainly contrary to its language and purpose.

The crucial language is in Section 3(4), which defines a Communist-front organization. That Section,

in addition to requiring proof of control by a Communist-action organization, also requires a showing that a Communist-front organization "is primarily operated for the purpose of giving aid and support to a Communist-action organization * * *." Thus, Section 3(4) on its face requires only support of a Communist-action organization; it does not require that this support be of any particular part of the activities of the latter group.

Section 2(7) describes how Communist fronts operate. Congress found that these organizations "are created and maintained, or used, in such manner as to conceal the facts as to their true character and purpose * * *. One result of this method of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purpose of, and the actual nature of the control and influence exerted upon, such 'Communist fronts.'" Obviously, no Communist front could operate as Congress described if it advocated forcible overthrow of the government. For such activity would immediately disclose to non-Communist members and supporters of the Communist front the nature of the latter organization.

Petitioner relies (Br. 48) on Section 13(f)(3), which directs the Board to consider "the extent to which [the alleged Communist front's] funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 * * *."

Petitioner says that "[t]he only objectives ascribed to Communist-action organizations by section 2" are forcible overthrow of the government. But the phrase "referred to in section 2" does not modify the noun "objectives"; it modifies the words "the World Communist movement," which is described at length in section 2. This construction is plainly correct as a matter of grammar and punctuation. The adjectival phrase cannot be carried back before the article "the" preceding the words "world Communist movement." ~~Since~~ The adjectival phrase plainly does not qualify the noun "objectives" in relation to Communist-action organizations [redacted].

This conclusion is verified by the other three factors which Section 13(f) requires the Board to consider in determining whether an organization is a Communist front. All three likewise direct the Board to consider the alleged Communist front's relationship in some particular to "any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2." Since none of these other factors concern "objectives" at all, it is clear that "referred to in section 2" modifies the world Communist movement and cannot refer to the objectives of Communist-action organizations, the Communist foreign government, and the world Communist movement in these four subsections.

In any event, even petitioner's reading of Section 13(f)(3) does not help its case. First, Section 13(f) does not define a Communist-front organization and

therefore does not require the Board to make any particular findings to find an organization to be a Communist front (see p. 70 above). Instead, it requires only that the Board take particular kinds of evidence into consideration. This means that it is Section 3(4) which is controlling. Second, petitioner's construction would require a showing that the alleged front organization used its funds, resources, or personnel to further or promote the ultimate objectives of the Communist Party, *i.e.*, forcible overthrow. Clearly, peaceful activities such as defense of Communist leaders and members furthers these objectives. It is not necessary to support forcible overthrow directly in order to further it.

The testimony before Congress at the time it passed the Subversive Activities Control Act also makes clear that Communist fronts, by definition, do not directly support forcible overthrow. William Green, the President of the American Federation of Labor, testified in 1948 that "[m]any organizations, sponsored by well-meaning but ill-informed men and women prominent in the community, the academic world, and even in church life, have been created for the sole purpose of providing a respectable front for furthering Communist aims and purposes." Hearings on H.R. 1884 and H.R. 2122, before the House Committee on Un-American Activities, 80th Cong., 1st Sess. 48. J. Edgar Hoover described the purposes of front organizations as attempting to promote "the interests of the Soviet Union in the United States, the promotion of war and peace aims, the exploitation of Negroes in the United States, work among foreign-lan-

guage groups, and to secure a favorable viewpoint toward the Communists in domestic, political, social, and economic issues." *Id.*, part II, p. 41. Dr. Emerson Schmidt, representing the Chamber of Commerce, quoted from Attorney General Biddle, who referred to Communist-front organizations "[r]epresented to the public for some legitimate reform objective, but actually used by the Communist Party to carry on its activities, pending the time when the Communists believe they can seize power through revolution." *Id.*, part I, p. 145. None of these descriptions fits an organization directly supporting forcible overthrow.[29]

Petitioner's argument would strip the Communist-front provisions of the statute of virtually all effectiveness. They would apply only to organizations performing the same functions as Communist-action organizations but which were controlled by a Communist-action organization instead of directly by the world Communist movement. Thus, the front provi-

[29] Petitioner's quotation (Br. 45–46) from the House Report (H. Rep. 2980, 81st Cong., 2d Sess.) does not support its construction of the Act. The Report states that Congress intended to "distinguish those features of Communist activity against which legislation cannot and should not be directed from those in the case of which legislative restraints are clearly practicable and necessary." *Id.* at 3. This language, upon which petitioner relies, does not add any detail to the Act itself. The Report then goes on to distinguish between "Communism as an economic, social, and political theory" and "Communism as a secret conspiracy, dedicated to subverting the interests of the United States to that of a foreign dictatorship." The discussion of the court below is fully consistent with this distinction since petitioner has been shown to be an active, though secret, supporter of Communist activities in this country which, in turn, are subservient to the world Communist movement.

sions would apply only if the Party had a subsidiary organization which essentially had the same activities of directly supporting forcible overthrow as itself. It hardly could be expected that the Party would operate by duplicating organizations in this manner and in fact, it has not. With perhaps one exception, none of the cases involving front organizations has concerned organizations directly supporting forcible overthrow.[30] Moreover, the underlying theory and actual operation of Communist-front organizations for forty years—as is described in detail in Appendix B below—demonstrate that such organizations are not directly involved in forcible overthrow. Instead, as Congress found, they give aid to the Party in other ways—such as by supporting the Party on various issues; by giving financial, legal, or other aid to the Party; and by inculcating their own members with attitudes which make the organizations fertile sources for recruitment of members for the Party itself.

In short, petitioner's reading of the statute ignores the basic character of Communist-front organizations, of which Congress was well aware when it passed the statute. These groups indirectly serve the ultimate Communist aim of forcibly overthrowing the government, by aiding and supporting Communist-action organizations, *i.e.*, the Communist Party, in apparently innocent ways. For example, petitioner defends Party members from deportation, works for repeal of deportation statutes affecting Party members, and tries to make Party causes in this field seem attrac-

[30] These cases are described in Appendix C below.

tive to non-Communists. These activities benefit the Party in two ways. They keep Party leaders and members in the United States to carry on their work, and they create sympathy for the Party which may ultimately result in support for, or even membership in, the Party. While these activities could be carried on by the Party itself, they could not be done nearly as well. The chances of persuading Congress to repeal particular statutes and of developing public sympathy with Communist ideas are obviously much better if these views come from an ostensibly unprejudiced, neutral source. Moreover, greater financial and other support for all these activities is likely to be forthcoming from the public if non-Communists, as well as Communists, can be persuaded to participate.

The dissenting opinion below stated that the severity of the disabilities imposed on members of Communist-front organizations by the Act "shows that Congress had no intention of inflicting them on otherwise innocent people merely because of membership in otherwise innocent organizations that the Communist Party uses to advance an innocent aim" (R. 86).[31] However, those disabilities do not apply to members of an organization until it has been found to be a Communist front and has been finally ordered to register.

[31] The dissenting opinion also states that it is doubtful that the disabilities could constitutionally be imposed on members of front organizations. The short answer here, as in the *Communist Party* case (367 U.S. at 70–81), is that the issues are premature in a case involving an order to register. Indeed, petitioner itself does not now challenge the constitutionality of the disabilities.

Congress in effect concluded that persons who remained members of the organization after such notice are not innocent of the relationship of the organization to the Communist Party. They are likely to be Party members or at least to have consciously chosen to give support to the Party. In these circumstances Congress reasonably decided to treat members of such an organization in almost [22] the same manner as members of the Communist Party itself.

Petitioner states (Br. 46) that the statutory "construction of the Board and the court below eliminates the aid component of section 3(4)," since the Party would not control an organization unless it was used for the Party's benefit. We agree that this will almost always be so, but it is possible that the Party would not operate an organization it controlled primarily to aid itself. Indeed, in this very case, the dissenting opinion below says that the government failed to prove that petitioner was operated *primarily* to give aid and support to the Communist Party even if the government's view of the aid and support component is accepted (R. 88–89). While we disagree with this conclusion in this particular case (see pp. 82–84 below), it demonstrates that the aid component is not a mere redundancy under our construction of the Act.

Petitioner argues (Br. 39–41) that it is being ordered to register merely because it carried out the laudable objective of defending persons, including members of the Communist Party, from deportation.

[22] Members of front organizations, unlike members of action organizations, are not prohibited from working in all defense facilities (Section 5(a)(1)).

This is of course not the case. An organization may be ordered to register only when it is controlled by a Communist-action organization and operates primarily to give aid and support to this organization. When Wendell Willkie and other lawyers carried out the responsibility of the bar by defending Communists from deportation, they did not come within the statute. Registration is not required merely because some action happens to benefit the Communist Party. Indeed, registration is not even required when this is the purpose of the action. Registration is narrowly limited to organizations which are controlled by and are in effect subsidiaries of the Communist Party.

Petitioner also suggests (Br. 45) that the government's view results in the Act being "harsher and less selective" toward Communist fronts than the Communist Party. It points out that a Communist-action organization may be required to register only if it is found to support forcible overthrow of the government. However, a Communist front can be required to register only if the organization which controls it has been found to be a Communist-action organization. A Communist front is necessarily an integral part of an organization which supports forcible overthrow. Consequently, the Act is not harsher toward Communist fronts—on the contrary, it treats Communist fronts virtually the same as, and indeed as parts of, the organizations which control them.

b. Petitioner contends (Br. 28–34, 48–49) that the Act requires proof that petitioner actually aided the Communist Party and not merely that it intended to

do so; and that the Board did not find actual aid. While petitioner admits that the court of appeals did find actual support (R. 72, 77–78), it argues (Br. 37), citing *Securities and Exchange Commission* v. *Chenery Corp.*, 332 U.S. 194, that a reviewing court can only rely on grounds invoked by the administrative agency.

The aid component of Section 3(4) requires a showing that the alleged Communist front is "primarily operated for the purpose of giving aid and support to a Communist-action organization * * *." Therefore, on its face, the Act seems to require only a showing of purpose and not of actual aid and support. However, there will rarely, if ever, be a case in which purpose is shown that there is not some actual aid. Consequently, this Court probably never will have to decide this issue. In any event, it clearly need not be decided here.

The Board found that petitioner provided the legal defense for officers and members of the Communist Party, fought against statutes providing for their deportation, and attempted "to win the good will of the foreign born" (R. 60). The Board then stated that "[o]bviously, these activities, particularly in opposing the laws and working to prevent the deportation of Communists, constitute aid to the Communist Party" (R. 60). Subsequently, the Board found that "[t]he weight of credible evidence established that the purposes of [petitioner] have in fact been to fight in many ways to prevent the deportation from the United States of members and officers of the Communist Party of the United States, and secondarily,

to seek to win the good will of a certain sector of the population as a reservoir from which could be drawn adherents to and supporters for the programs and aims of the Communist Party" (R. 65). And in its ultimate findings, the Board concluded that petitioner is "primarily operated for the purpose of giving aid and support" to the Communist Party (R. 66). Thus, the Board found that petitioner both primarily had the purpose of aiding, and in fact aided, the Communist Party.[33]

The court of appeals found that petitioner in fact "operated primarily to aid and support the Party" (R. 78) in two ways: by contesting the deportation of Party members and by building sympathy for the Party[34] (R. 78–80). While it did not specifically

[33] Contrary to petitioner's suggestion (Br. 33, note 12), the Board's findings are perfectly clear.

[34] The court of appeals stated that "it is indubitably clear that any laudable, praiseworthy activity [of petitioner] which is identified in the public mind with the Communist Party or with Communism, * * * or is identified as being within the community of policies advocated by the Party, is a benefit to and naturally an objective of the Party. The identification of itself with laudable causes would, of course, be a benefit to the Party, as it is to any organization" (R. 80). This statement is erroneous insofar as it says that petitioner deliberately connected itself with the Communist Party or Communism. As we have described above (pp. 47–51, 76–77), the value of a Communist-front is that its relationship to Communism is kept secret so that it can attract support from non-Communists. In this way, it gets non-Communists to assume some of the responsibilities which would otherwise have to be undertaken by the Party itself and leads non-Communists toward sympathy with Communist positions. Thus, the end result is, as the court of appeals correctly found, greater public sympathy with, and support for, the Communist Party.

state that this was the purpose of petitioner's activities, this was the plain implication of the court's decision. Moreover, the court of appeals concluded that petitioner "was a Communist front within the terms of the statute" (R. 84). Since Section 3(4) explicitly rquires that a Communist front be found to be "primarily operated for the purpose of giving aid and support to a Communist-action organization," it is clear that the court agreed with the Board that this was the purpose of petitioner.

Thus, the Board and the court of appeals agreed that petitioner both had the purpose of, and actually did, operate primarily to give aid and support to the Communist Party. In these circumstances, there is no need to determine whether an organization whose purpose is to give aid and support to the Communist Party may properly be held to be a Communist front even if it did not actually give such aid and support.

2. The evidence supports the Board's finding that petitioner was primarily operated for the purpose of giving aid and support to the Communist Party

Petitioner also argues that the Board's finding that "the *purposes* of [petitioner] have been to aid and support the Communist Party" (emphasis added) (R. 53) is not supported by the evidence.

a. Since the evidence on this issue is summarized in the Statement, pp. 13–20, it will only be briefly described here. The Communist Party has long considered it important to draw the foreign born and other groups into the "class struggle" (A.G. Ex. 1, p. 701). One such effort was the International Labor

Defense, the American section of an organization with headquarters in Moscow, which in the 1930's provided legal defense for persons arrested in connection with working class activity, organized mass demonstrations and petitions concerning such arrests, and recruited members to the Communist Party. Petitioner was started in 1932 or 1933 to handle the International Labor Defense's work in deportation cases. A large, if not the greater, part of petitioner's legal work has been in behalf of officers and members of the Communist Party. In addition, petitioner worked for the repeal of deportation statutes applying to Party members and of other statutes relating to Communist activities. Former members of the Communist Party, who were familiar with petitioner's activities, testified that the purpose of the American Committee and the local committees was to protect Party members from deportation and to help the Party by attracting persons interested in the foreign born to support Party positions. And witnesses testified that the Party members who led petitioner were deliberately carrying out Party policies within petitioner. This was ample evidence to support the Board's finding.

The dissenting opinion below points to the fact that petitioner defended many non-Communists as undermining the Board's finding that petitioner operated *primarily* to give aid and support to the Communist Party (R. 88–89). However, the evidence shows that about half of the cases defended by petitioner involved Party members. Even if the proportion were significantly smaller, it would not help petitioner. The defense of non-Communists from deportation

helped petitioner to serve as a Communist front. A member of the Party testified that such defense was not incompatible with petitioner's operations as a Party defense organization, since it added to petitioner's prestige (Tr. 1134; R. 57). If petitioner had defended only Communists, its connection with the Communist Party would quickly have become apparent. By defending non-Communists, it appeared to be an independent organization interested only in the civil liberties of all the foreign born. Thus, the defense of non-Communists was necessary to attract such people to the organization. And such persons were crucial to petitioner, since they were needed to add numerical weight to petitioner's support of Party positions, to give financial aid, and, after gradual indoctrination, to be a source for new Party members. If petitioner did not attract non-Party support, there would be no need for it as a front and all its functions could be handled by the Party itself. In short, the defense of non-Communists is in no way inconsistent with the overwhelming evidence that petitioner operated to give aid and support to the Communist Party.

b. Petitioner attacks (Br. 64–69) the Board's reliance on testimony by John Lautner, Bernice Baldwin, and James Glatis concerning the policies of the American Committee and the local committees on the ground that it constitutes opinion evidence. However, as the Administrative Procedure Act provides (5 U.S.C. 1006(c)) and the cases hold (*e.g., Swift & Co.* v. *United States,* 317 F. 2d 53, 55 (C.A. 7)), ad-

ministrative agencies can consider opinion evidence and give it the weight to which they believe it entitled.

Moreover, here the government's witnesses did not base their testimony on their expert opinions as long-time Party members but on their actual experiences with the Party and with petitioner. The testimony of Lautner which petitioner attacks is that "[t]he functionaries of [petitioner], the top functionaries, like Abner Green and Harriet Bar[r]on, attended Party meetings and had the benefit of the discussions and deliberations of the Party on all policies, and carried out Party policies with respect to their own organization, and fitted Party policies into the functions of their own organization" (Tr. 1005). Petitioner claims that this statement is too conclusory and that Lautner had no direct knowledge of petitioner's work. While Lautner's testimony does not describe particular meetings and policies, it does describe generally facts which are relevant to this case. Certainly, an administrative agency is entitled to consider such testimony. If petitioner doubted that Lautner's testimony was founded on any actual facts, it could have cross-examined him concerning the basis for his statement.

Lautner was plainly qualified to make the statement which petitioner challenges. Admittedly, Lautner did not participate directly in petitioner's activities (Tr. 1008–1010, 1138–1143, 1176). He was, however, an important Party leader and could therefore testify about Party meetings and policies (Tr. 978–985). The record also shows that he had considerable con-

tact with petitioner, including participation in the decision to make Abner Green petitioner's executive secretary (Tr. 991–996, 1077–1079). Thus, Lautner could reasonably have the information, which he claimed to have, that petitioner was carrying out Party policies.

Petitioner likewise attacks (Br. 67–69) the Board's reliance (R. 38–39) on testimony by Mrs. Baldwin and Glatis that the purpose of the Michigan and New England local committees was to defend Party members threatened with deportation. It says that these witnesses, like Lautner, were not qualified to testify concerning the local committee's policies. However, Mrs. Baldwin was a Party member who had been assigned by the Party to attend a national conference of petitioner where she was chosen an officer of the convention (Tr. 1342–1346, 1472; R. 38). Glatis, who was also a Party member, was assigned by the Party to work with Communist-front organizations in New England (Tr. 743–744; R. 38). In this capacity, he attended three meetings of the New England local committee, received literature from it, and during his Party membership heard conversations concerning the local committee's policies (Tr. 472, 733, 743–754, 762–771, 782–783; R. 38–39). Surely, it is reasonable to assume, in the absence of any indication to the contrary, that persons chosen by the Party to participate in petitioner's activities would know whether petitioner's local committees in their area were following Party policies.

Petitioner also says that Lautner's testimony concerning petitioner's policies was relied on by the

Board in considering the aid component (R. 40), while the court of appeals relied on it concerning the control component (R. 76). In fact, however, neither the court's nor especially the Board's findings are meticulously divided between the two components. This is not surprising since many kinds of evidence simultaneously support both findings. For example, Lautner's testimony that the Party members who run petitioner still are active in Party affairs and carry out Party policies within petitioner tends to show both that the Party controls petitioner and that petitioner operates to support the Party. Since this evidence related to both components, it must be assumed, in the absence of clear indication to the contrary, that it was so used by both the Board and court below.

c. Petitioner likewise attacks (Br. 69–71) the weight given by the Board to certain hearsay evidence. Here again, however, the Administrative Procedure Act allows an agency to consider such evidence (5 U.S.C. 1006(c)) to the extent that it is rationally probative as long as it is supported by other non-hearsay evidence. *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U.S. 197, 229; *National Labor Relations Board* v. *Service Wood Heel Co.,* 124 F. 2d 470, 472 (C.A. 1); *National Labor Relations Board* v. *Imparato Stevedoring Corp.,* 250 F. 2d 297, 302–303 (C.A. 3); *Willapoint Oysters, Inc.* v. *Ewing,* 174 F. 2d 676, 690–691 (C.A. 9). See also *Federal Trade Commission* v. *Cement Institute,* 333 U.S. 683, 705–706; *Interstate Commerce Commission* v. *Baird,* 194 U.S. 25, 44. The testimony which peti-

tioner attacks as hearsay consisted of statements made by Party leaders to other Party members concerning the policies of the American Committee and its local committees. Since this evidence was consistent with other non-hearsay evidence (see pp. 82–84 above), the Board could reasonably believe it.

d. Petitioner attacks (Br. 59–64) the Board's reliance on evidence that petitioner supported the defense of Fred Estes and James Green who were prosecuted for refusal to produce books or testify at immigration hearings, and that it supported and defended Gerhart Eisler in his contempt-of-Congress case and his efforts to leave the country (R. 42–44, 66). In fact, the Board hardly mentioned the *Estes* and *Green* cases in its Report. Its only conclusion based upon them is that, since these cases did not directly involve deportation, "respondent went beyond the normal defense of the foreign born by supporting Communist Party functionaries Fred Estes and James Green * * *" (R. 42). That finding is accurate—petitioner's official publication described the two cases as justifying its statement that "the Immigration and Naturalization [Service] in Texas has unleas[h]ed an 'anti-alien' hysteria which is resulting in the threatened jailing of American citizens" (P. Ex. 210, p. 2). Surely, this strong statement constituted support for the Board's reference to the *Estes* and *Green* cases.

The Board also found that petitioner's defense of Eisler went "beyond the normal, avowed purposes of respondent" and that "[t]he Eisler case is but one of a number of instances shown by the record where

[petitioner's] views and policies have been similar to and have not deviated from the views and policies of the Communist Party" (R. 43, 44; see R. 66). The first conclusion is supported by the fact that petitioner's participation in Eisler's contempt-of-Congress case, while connected to some extent with deportation, still was beyond petitioner's usual activities.

In any event, the statements concerning the *Eisler* and especially the *Estes* and *Green* cases are hardly vital to the Board's conclusion that petitioner operates primarily to give aid and support to the Communist Party. These conclusions were based on hundreds of cases and years of propaganda activity. Consequently, even if the statements by the Board concerning the *Eisler, Estes,* and *Green* cases were ignored entirely, it would make no difference. As this Court held in the *Communist Party* case, where the court of appeals had struck a subsidiary administrative finding (367 U.S. at 67):

> Remand would be called for only if there was solid reason to believe that without that subsidiary finding the agency would not have arrived at the conclusion at which it did arrive.

Accord, *National Labor Relations Board* v. *Newport News Co.*, 308 U.S. 241, 247; *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 205 F. 2d 131 (C.A. 1), certiorari denied, 346 U.S. 887; *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 169 F. 2d 881, 883 (C.A. D.C.), certiorari denied, 335 U.S. 854. Upon a reading of the Board's full report, it is evident that the findings as to Eisler, Estes, and Green were not crucial to the Board's ultimate conclusion.

e. Petitioner objects (Br. 71–72) to the Board's reliance on praise by an official publication of the Communist Party for petitioner's work as showing petitioner's purpose to support the Communist Party. Since this is an extremely minor element of the Board's findings and is clearly not essential to its ultimate determination, the holding below should not be reversed even if petitioner were correct that this evidence is insubstantial. In fact, the evidence is relevant. Section 13(f)(2) directs the Board to consider "the extent to which" an alleged front organization receives "its support, financial or otherwise * * * from any Communist-action organization." The statements of the Party publication clearly constituted support for petitioner. After the sentence quoted by petitioner in which the Party publication praised petitioner, it went on to say that "[i]t is the duty of all progressives to appreciate the need of [petitioner], help raised funds and support [its] work" (A.G. Ex. 229, p. 127; R. 40).

f. Section 13(f)(4) of the Act directs the Board to consider "the extent to which the positions taken or advanced by [the alleged front organization] from time to time on matters of policy do not deviate from those of any Communist-action organization * * *." Petitioner argues that the Board and the court below erred in considering the evidence of non-deviation as related to the aid component (Br. 73–74) and in weighing the evidence of non-deviation (Br. 74–80; see also Br. 93–96).[35]

[35] Petitioner also states (Br. 73–74) that the Board relied on non-deviation only to support its findings as to the aid com-

The Board relied upon the evidence of non-deviation to support its finding that petitioner operated primarily to give aid and support to the Communist Party (R. 53). This conclusion seems self-evident—if an organization invariably agrees with the policies of another organization (and particularly when there is other evidence that the first organization is controlled by the second), this is evidence that the first organization is operating in support of the second. For the state of a man's mind, his "purpose," must be inferred from what he says and does. *American Communications Assn.* v. *Douds,* 339 U.S. 382, 411; *Killian* v. *United States,* 368 U.S. 231, 247–249.

Moreover, as this Court held in the *Communist Party* case, non-deviation also is evidence that the second organization controls the first. 367 U.S. 1, 61. The fact that non-deviation relates to the control component does not suggest, either as a matter of logic or by virtue of this Court's decision in the *Communist Party* case, that it does not also relate to the aid component. Accord, *Veterans of the Abraham Lincoln Brigade* v. *Subversive Activities Control Board,* 331

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ponent; that the court of appeals used this evidence as to the control component; and that the reviewing court may not base its findings on evidence not used for this purpose by the administrative agency. However, as pointed out above, the Board's findings are not rigidly compartmentalized between the two components. While it plainly did use evidence of non-deviation to find support of the Communist Party (R. 53), there is no reason to believe that it so limited its reliance on this evidence (see R. 65–66).

F. 2d 64, 71 (C.A. D.C.), pending on writ of certiorari, No. 65, this Term.

Petitioner also attacks the evidence relied upon by the Board in its finding of non-deviation. Despite petitioner's numerous quibbles, it can point to no subject upon which it and the Communist Party differed.[36] In contrast, the evidence shows not only many subjects upon which their viewpoints were identical but also significant similarities of phraseology (*e.g.*, cf. A.G. Exs. 281, 282, 283 with A.G. Exs. 185, 194, 199; cf. A.G. Ex. 169 with A.G. Ex. 279, p. 3).

g. The Board found that a secondary purpose of petitioner was "to seek to win the good will of a certain section of the population as a reservoir from which could be drawn adherents to and supporters for the programs and aims of the Communist Party" (R. 65). Petitioner claims (Br. 80–83) that this finding is not supported by evidence. In fact, however, the evidence shows that the Party's policy is to attract the foreign born into the Party (A.G. Ex. 1, p. 701; R. 36). Since other evidence shows that petitioner is controlled by the Communist Party and that the Party actively supports petitioner, there is a strong likelihood that this is petitioner's purpose.

[36] Petitioner says (Br. 75) that it opposed only the registration sections of the Smith Act while the Party opposed only the "sedition" provisions. Even if this were true, this does not show deviation. It would only show that on two subjects only one of the two organizations took any stand. In fact, however, petitioner did attack the "sedition" sections of the Smith Act (A.G. Ex. 169; P. Ex. 191; R. 45, 46; see also A.G. Ex. 56 (p. 6); R. 46). While petitioner says that Attorney General's Exhibit 169 was not published by petitioner, it was written by its executive secretary, Abner Green, the magazine states that the article is published "in association with" petitioner, the officers and addresses of petitioner are listed, and a coupon appears which is to be used for making contributions to petitioner.

This inference is supported by substantial direct evidence. Petitioner grew out of an organization which had as one of its purposes the attraction of members to the Communist Party (Tr. 228, 237–238; R. 37). Two witnesses testified that petitioner's North-West committee was formed in part to attract the foreign born to support Party positions (Tr. 1581–1583, 2977; R. 36). And John Lautner testified that petitioner's leaders carried out Party policies within petitioner, which would include attracting the foreign born to the Party (Tr. 1005, 1139; R. 40, 57–58).

D. THE BOARD AND THE COURT BELOW PROPERLY CONSTRUED AND APPLIED THE DEFINITION OF "ORGANIZATION" IN SECTION 3(2)

Petitioner claims (Br. 50–53, 56–57) that the Board and the court of appeals misconstrued the Act in finding that the various local committees for Protection of Foreign Born were part of the same organization as the American Committee.[37] It was on the basis of this finding that the Board and the court below considered the evidence relating to the control and operations of the local committees as relating to petitioner.

1. The Board correctly construed the Act

Section 3(2) of the Act defines "organization" as "an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint

[37] The constitutionality of this construction under the First Amendment and due process clause of the Fifth Amendment is discussed below at pp. 146–148.

action on any subject or subjects." The Board found that "the American Committee and the various area or local committees are associated together for joint action on particular subjects. Together they constitute a voluntary association and are organizations within the meaning of the term 'organization' set forth in section 3(2) of the statute" (R. 27).

The court of appeals decided that it was not necessary to decide whether the local committees were "autonomous organizations" or were "integral parts" of petitioner because "[i]t is abundantly clear that, whatever the technicalities may be as to the nature of these unincorporated associations, they were intermeshed with the national group, not only in policies but in operation" (R. 77). Thus, the court of appeals in effect restated the definition of organization in Section 3(2) in different words.

Petitioner attacks the Board's construction of Section 3(2) on the ground that the Board relied upon the portion of the definition referring to "a group of persons * * * associated together for joint action." Petitioner says that this phrase cannot be applied to groups as well as to persons who are associated together. However, Section 3(1) defines "person" in the Act to mean "an individual or an organization." Therefore, Section 3(2) in effect includes within its definition of an "organization" "a group of persons or of organizations * * * associated together for joint action." Moreover, there is no logical difference between the joint action of groups and of individuals. Stated differently, if individuals associated together for joint action constitute an organization, so do

groups associated together for joint action. This Court has construed another statute, without such a broad definition, as allowing organizations which are formally separate to be treated as one "organization." *Sunkist Growers, Inc.* v. *Winckler & Smith Citrus Products Co.*, 370 U.S. 19, 27–29. Here, where the Act has a broad definition of "organization" the Board's construction was, at the least, reasonable and well within the discretion of the administrative body charged with the responsibility of construing and applying the statute (see p. 57 above).

In any event, the Board did not rely only on the portion of Section 3(2) referring to persons associated for joint action. The Board also found that petitioner and the local committees together constituted a "voluntary association." Since Section 3(2) defines "organization," *inter alia,* as an association, this finding is plainly based on a proper construction of the Act.

Finally, petitioner contends (Br. 50–56) that the Board was required to find that the American Committee controlled the local committees. Nothing in the statute requires this construction. Indeed, it is completely inconsistent with the phrase "associated together for joint action," since such association plainly does not require control. While, as petitioner notes, the American Committee may not be able to obtain information required for registration from the local committees unless it controls them, this would merely mean that the American Committee would not violate the Act by failing to provide this information.

Petitioner also says (Br. 57) that the Board's construction of the Act means that the Communist-front provisions are unnecessary since under the Board's interpretation of "organization," Communist fronts are part of the Communist Party. Stated differently, petitioner's argument is that the findings and order in the *Communist Party* case concerning the Party would automatically include all Communist fronts if the Board's broad definition of "organization" were correct. However, petitioner's definition of "organization" involves the same problem. For under that definition a Communist front must control any persons or groups which are to be considered as part of it. But such control of Communist fronts by a Communist-action organization is specifically required by Section 3(4). Thus, under either petitioner's or the Board's construction of Section 3(2), it would be arguable, considering that Section alone, that Communist-front organizations must be treated as part of the Communist Party both in making findings concerning the character of the Party and in determining the scope of the Board's order for the Party to register. However, the Communist-front provisions in the Act settle any possible ambiguity by making plain that separate proceedings are required before a front organization can be compelled to register.

2. The evidence supports the Board's finding

The evidence before the Board is summarized in the Statement at pages 8–10. Briefly stated, the local committees had the identical name as petitioner except that "American" was replaced by "North-

West," "Mid-West," and the like. The American Committee's publications frequently listed the local committees under the heading "American Committee for Protection of Foreign Born," with the local committees simply designated as "North-West," etc.; treated the activities of the local committees as part of its own; and stated that various local committees were "a part of" or "affiliated to" the American Committee (P. Ex. 151, p. 5; A.G. Ex. 34). The American and local committees worked closely together in defending cases and or other activities. The American Committee initiated the organization or reorganization of local committees. The executive direction of the American Committee acted as coordinator of the local committees and officers of the American Committee were officers of local committees. This evidence thus fully supported the finding of the Board that the American Committee and the local committees were associated together for joint action.

E. THE BOARD DID NOT ERR IN LIMITING THE CROSS-EXAMINATION OF GOVERNMENT WITNESS LAUTNER

Petitioner contends (Br. 98–102) that the hearing examiner erroneously limited its cross-examination of an important government witness, John Lautner; that therefore his testimony must be stricken; and that the remaining evidence does not support the Board's determination. More specifically, petitioner points to the refusal of the hearing examiner to require Lautner to answer one question: "Where do you live?" (Tr. 1083–1088; R. 113–115).

We have seen (pp. 58–59) that this Court held in the *Communist Party* case that the Board has broad power to determine whether to strike the testimony of a witness when by mistake the government failed to produce his possibly inconsistent statements which would have served as the basis for cross-examination. 367 U.S. at 28–29. *A fortiori,* the Board has discretion to refuse to strike a witness' testimony where the hearing examiner refused to allow a single question which did not directly concern the witness' testimony but related only to his background. As the Board concluded (R. 28, note 1):

> Lautner's direct testimony covered 100 pages of the transcript and he was cross-examined for 283 pages. We see no basis for contending that the absence of Lautner's residence address in any way impaired cross-examination. Respondent developed that at the time of testifying Lautner was a paid employee of [the Attorney General] and the cross-examination shows that respondent's counsel was adequately informed as to Lautner's background, environment and activities.[38]

Thus, even if the question should have been allowed, it was well within the Board's discretion to determine that this refusal to permit a single question during extensive cross-examination of a witness (Tr. 1076–1312, 1792–1838) was not prejudicial error requiring the striking of his entire testimony.

Moreover, the hearing examiner's ruling was proper. The Administrative Procedure Act provides

[38] See, *e.g.*, Tr. 1794–1806.

that administrative agencies shall allow "such cross-examination as may be required for a full and true disclosure of the facts." 5 U.S.C. 1006(c). Here, as the Board pointed out, this question had only slight value in disclosing any facts. Furthermore, the hearing examiner had good reason for not requiring Lautner to give his home address. Lautner had testified that his life had been threatened (Tr. 1835). The cross-examination, which petitioner says (Br. 100) was "designed to expose the claim as insincere," did not include questions concerning such threats, but was instead limited to argumentative questions such as, "As a matter of fact, the reason that you gave for refusing to answer my question is a complete invention which you have made up to glamorize and dramatize yourself, isn't that true?" (Tr. 1087–1092). In these circumstances, the Board did not abuse its broad discretion in sustaining the examiner's refusal to allow petitioner to ascertain Lautner's home address.

Petitioner relies on *Alford* v. *United States*, 282 U.S. 687, where the Court held that the refusal of a district court to allow cross-examination of a government witness concerning his residence was prejudicial error. *Alford*, however, is not controlling here. First, *Alford* was a criminal case; administrative agencies have broader discretion in determining the scope of cross-examination. The extent of examination and cross-examination of witnesses rests in the sound discretion of the trial examiner. *Loesch* v. *Federal Trade Commission*, 257 F. 2d 882 (C.A. 4), certi-

orari denied, 358 U.S. 883; *National Labor Relations Board* v. *Grieder Machine, Tool and Die Co.*, 142 F. 2d 163 (C.A. 6), certiorari denied, 323 U.S. 724; cf. *Reilly* v. *Pinkus*, 338 U.S. 269, 276.

Second, the Court did not suggest that refusal to allow this question was a reversable error under all circumstances. Thus, in *United States* v. *Easterday*, 57 F. 2d 165, 166 (C.A. 2), Judge Learned Hand did not read *Alford* as laying down an inflexible rule. Accord, *United States* v. *Krulewitch*, 167 F. 2d 943, 947 (C.A. 2), reversed on other grounds, 336 U.S. 440. In *Capriola* v. *United States*, 61 F. 2d 5, 10 (C.A. 7), the court of appeals said that the question of danger to a witness from disclosure of his home address was a matter of discretion for the trial judge. And in *United States* v. *Rich*, 262 F. 2d 415, 418–419 (C.A. 2), the court upheld a district court's refusal to allow a question on cross-examination concerning a witness' address because of the danger of intimidation.

Finally, this Court's holding in *Alford* was based on two possible uses for the witness' home address—(1) "to place the witness in his proper setting and put the weight of his testimony and his credibility to a test"; and (2) to disclose whether the witness was in government custody, which might indicate that "his testimony was biased because given under promise or expectation of immunity." 282 U.S. at 692, 693. Defense counsel pointed out both reasons for the question to the district court, which nonetheless ruled it to be immaterial. *Id.* at 689–690, note 1. The second reason in *Alford* does not apply here at all. Lautner

admitted his connection with the government—indeed, he testified that he was an employee of the government and could be reached at the Department of Justice (Tr. 976, 1794–1806; R. 28, note 1). Thus, the question asked by petitioner's counsel had no direct relevance to possible bias of the witness. While the question might have led to additional background as to Lautner, petitioner's counsel suggested no justification for seeking the witness' address, but apparently believed he was entitled to ask it as a matter of right (Tr. 1086–1087). As we have shown, this assumption was erroneous.

III

THE REGISTRATION PROVISIONS OF THE SUBVERSIVE ACTIVITIES CONTROL ACT ARE CONSTITUTIONAL

The registration provisions of the Subversive Activities Control Act have two parts. First, they provide for a determination whether an organization is controlled by, and primarily operates to give aid and support to, a Communist-action organization and therefore is a Communist-front organization. Second, the Act requires such organizations to register, to disclose the names of their officers, and to give a financial accounting. It is clear that Congress considered the making of findings as to the Communist-action or -front character of organizations to be an important function standing alone, regardless of whether the subsequent registration can actually be compelled. As we have seen (pp. 36–47), Congress had attempted for more than ten years before passage of the Act to provide effective means for publicizing the

activities of individuals and groups acting for foreign governments. Moreover, it is significant that Congress gave the Board the power, with regard to "Communist infiltrated" organizations, to make orders and findings determining the character of such organizations, without requiring them to register (see Appendix A, p. 182 below). And, finally, the Act has a broad separability clause providing that, if any provision or application of a provision of the Act is held invalid, the remaining provisions and applications shall not be affected (Section 32).

We therefore consider the constitutionality of the two parts of the registration provisions separately. We will show at length below that the requirements of registration and disclosure are constitutional. We will first show here, however, that the constitutionality of determining whether organizations are Communist fronts is plain beyond doubt.

A. THE AUTHORITY OF THE BOARD TO DETERMINE WHETHER ORGANIZATIONS ARE COMMUNIST FRONTS IS CONSTITUTIONAL

In *Communist Party* v. *Subversive Activities Control Board,* 367 U.S. 1, this Court upheld the constitutionality of the provisions of the Act requiring Communist-action organizations to register. *Id.* at 81–105, 110–115. Justices Douglas and Brennan, in dissenting, said that the registration provisions could not be enforced because of the privilege against self-incrimination but otherwise upheld the Board's determination. *Id.* at 174, 190. While Mr. Justice Black dissented on the ground of the First Amendment, he based his opinion entirely on the coercive effect of

the Act. *Id.* at 137–169.[39] Thus, every Justice who voted on the issue either explicitly or, in the case of of Mr. Justice Black impliedly, agreed that the Board's determination concerning the character of the Party was constitutional.

Earlier, in *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 125, this Court considered the constitutionality of the Attorney General's list of "totalitarian, fascist, communist or subversive" organizations. While the Court held ~~the list~~ three listings invalid, only one of the six opinions stated that the mere listing of an organization alone violated the First Amendment. Mr. Justice Burton found the list invalid because the determinations as to the various organizations were arbitrarily made without evidence to support them and the President had not delegated such an arbitrary power to the Attorney General. *Id.* at 136–139. Justices Douglas, Frankfurter, and Jackson agreed with this conclusion because the lack of fair procedures violated the due process clause of the Fifth Amendment. *Id.* at 161–174, 178–183, 186. And the three dissenting Justices specifically rejected the First Amendment argument. *Id.* at 199–200. Only Mr. Justice Black said that the list violated the First Amendment. *Id.* at 143.

In addition, numerous decisions of this Court have upheld against attack under the First Amendment, statutes which require organizations to disclose various information. These cases, which are discussed below (pp. 114–116), apply *a fortiori* to a mere determination concerning the character of an organization.

[39] The Chief Justice took no position on this issue.

The Board follows the same procedure in making determinations concerning Communist-front organizations as it does in cases involving Communist-action organizations. Unlike the list involved in the *Joint Anti-Fascist* case, under this Act the finding that an organization is a Communist-action group must be made on the basis of evidence developed in a full administrative hearing—in which the burden of proof is on the government and the organization has the right to cross-examine government witnesses and to offer evidence—and it is followed by full judicial review. In the *Communist Party* case this Court apparently had no doubt as to the propriety of this procedure for making the determination as to the character of a Communist-front organization, and the appropriateness of making such determination. The need for determining whether organizations are Communist fronts is, if anything, even greater, and the validity of making such determinations even clearer.

Communist-action organizations, although they frequently operate secretly, usually make clear their connection to the world Communist movement. Thus, for example, no one could join or support the Communist Party without knowing at least generally that it was Communist. On the other hand, Communist-front organizations, although often operating publicly, almost invariably conceal their connection with Communism. As a result, as Congress found in this Act, Communist-front organizations "are able to obtain financial and other support from persons who would not extend such support if they knew the true

purposes of, and the actual nature of the control and influence exerted upon, such 'Communist fronts'" (Section 2 (7)).

The Board's determination that an organization is a Communist front has two effects. Persons who have been deceived into supporting a Communist-controlled organization without knowing it are provided with the information upon which they can decide whether to continue their support. Conversely, the Act undoubtedly interferes with the organization's activities since members and contributors who would not knowingly support a Communist-controlled organization will disaffiliate themselves. The result may be, where most of the Front's support is from deceived non-Communists, that the front will no longer be able to continue. But, surely, Congress has the power to provide for notifying the people that certain organizations are indirectly controlled by a foreign government so that they can decide for themselves whether they wish to belong to and support such organizations. As Mr. Justice Black, with whom Mr. Justice Douglas concurred, stated concerning the Foreign Agent Registration Act in dissenting in *Viereck* v. *United States*, 318 U.S. 236, 251:[40]

> Resting on the fundamental constitutional principle that our people, adequately informed, may

[40] The constitutionality of the Foreign Agents Registration Act was not challenged in the *Viereck* case, either in the court of appeals (*Viereck* v. *United States*, 130 F. 2d 945 (C.A. D.C.), reversed, 318 U.S. 236; *Viereck* v. *United States*, 139 F. 2d 847 (affirming conviction following retrial), certiorari denied, 321 U.S. 794), or in this Court. This Court's reversal of Viereck's first conviction was based on grounds not material here.

be trusted to distinguish between the true and false, the bill is intended to label information of foreign origin so that hearers and readers may not be deceived by the belief that the information comes from a disinterested source. Such legislation implements rather than detracts from the prized freedoms guaranteed by the First Amendment.

As to the Fifth Amendment—insofar as the Act merely provides for determining whether organizations are controlled by, and operate primarily to give aid and support to, Communist-action organizations—no issue is even raised. For neither petitioner nor any of its officers or members are called upon to do anything. Thus, the dissenting opinions in the *Communist Party* case which were based on the Fifth Amendment disagreed with the majority only insofar as the Communist Party was ordered by the Board to register and disclose certain information. 367 U.S. at 170–175, 190.

B. THE AUTHORITY OF THE BOARD TO ORDER DISCLOSURE IS CONSTITUTIONAL

1. The disclosure requirements do not violate the First Amendment

a. This Court's Decision in Communist Party v. Subversive Activities Control Board *Is Controlling*

In *Communist Party* v. *Subversive Activities Control Board,* 367 U.S. 1, this Court considered the constitutionality under the First Amendment of the registration provisions of the Act in a case involving a Communist-action organization. The Court held that, when a restraint on speech or assembly results in-

cidentally, rather than directly, the courts must balance the importance of the national interest against the degree of interference with personal rights; that in the Act, Congress made findings, which were based on extensive investigation and cannot be deemed irrational, that Communist organizations in this country are under the control of a foreign country and pose a serious danger to the government of the United States; that Congress has broad power to protect the Nation against such foreign danger; that the Court had previously upheld numerous registration and disclosure statues; and that consequently Congress may constitutionally require registration, including disclosure of officers and members of the organization and a financial accounting. 367 U.S. at 88–105. We submit that this holding equally applies to the present case.

Moreover, as we have noted, of the four dissenting Justices in the *Communist Party* case, only Mr. Justice Black would have held the Act unconstitutional on the basis of the First Amendment. 367 U.S. at 137–169. While the Chief Justice did not find it necessary to reach this issue (*id.* at 136–137), Justices Douglas and Brennan both concluded that the Act was not unconstitutional on this ground (*id.* at 175, 191). Indeed, Mr. Justice Douglas' summary of why the First Amendment does not prohibit requiring the Communist Party to register succinctly states why such a requirement as to petitioner is also valid (*id.* at 174–175):

> The Bill of Rights was designed to give fullest play to the exchange and dissemination of

> ideas that touch the politics, culture, and other aspects of our life. When an organizations is used by a foreign power to make advances here, questions of security are raised beyond the ken of disputation and debate between the people resident here. Espionage, business activities, formation of cells for subversion, as well as the exercise of First Amendment rights, are used to pry open our society and make intrusion of a foreign power easy. These machinations of a foreign power add additional elements to free speech just as marching up and down adds something to picketing that goes beyond free speech.

Here, petitioner is indirectly, but just as surely, controlled by a foreign power and it operates secretly through covert means designed to make intrusion of a foreign power easy.

This case, like the *Communist Party* case, involves the registration provisions of the Act (Section 7). The only difference between the two cases is that petitioner has been found to be a Communist-front organization whereas the Community Party is a Communist-action organization. This means that the Communist Party is controlled by, and supports, the world Communist movement while petitioner is controlled by, and supports, the Communist Party. Petitioner is just as much a part of the world Communist movement as the Party itself; the only difference is that the movement controls the Party directly, and petitioner indirectly.

Congress found in Section 2 of the Act that Communist-action organizations operate through Com-

munist fronts which conceal their true character. This Court specifically upheld this finding in the *Communist Party* case (367 U.S. at 94–95):

> And Congress has found that these action organizations employ methods of infiltration and secretive and coercive tactics; that by *operating in concealment and through Communist-front organizations, they are able to obtain the support of persons who would not extend such support knowing of their true nature;* that a Communist network exists in the United States; and that the agents of communism have devised methods of sabotage and espionage carried out in successful evasion of existing law. The purpose of the Subversive Activities Control Act is said to be to prevent the world-wide Communist conspiracy from accomplishing its purpose in this country.
>
> It is not for the courts to re-examine the validity of these legislative findings and reject them. See *Harisiades* v. *Shaughnessy,* 342 U.S. 580, 590. They are the product of extensive investigation by Committees of Congress over more than a decade and a half. Cf. *Nebbia* v. *New York,* 291 U.S. 502, 516, 530. We certainly cannot dismiss them as unfounded or irrational imaginings. See *Galvan* v. *Press,* 347 U.S. 522, 529; *American Communications Assn.* v. *Douds,* 339 U.S. 382, 388–389. [Emphasis added.]

The finding concerning Communist fronts is amply supported by evidence that Communist-front organizations have been for forty years a vital weapon in Communist strategy to overthrow democratic governments (see Appendix B below).

Surely, if Congress can require registration of a Communist-action organization, it can require registration of its instrumentalities. Both are controlled by, and have the primary purpose of supporting, the world Communist movement. If any constitutional distinction is drawn between these two types of Communist organizations, Congress' power over Communist-action organizations could be reduced to a virtual nullity by such organizations delegating all or most of their functions to subsidiaries. Such a result is plainly inconsistent with the underlying rationale of the *Communist Party* case that Congress has broad power to regulate Communist organizations in the interest of protecting national security. For the Court, in upholding the registration provisions as to Communist-action organizations, relied upon the findings of Congress that the Communist movement is a single conspiracy which Congress has the power to regulate as a whole (367 U.S. at 96–97):

> Of course, congressional power in this sphere, as in all spheres, is limited by the First Amendment. * * * But where the problems of accommodating the exigencies of self-preservation and the values of liberty are as complete and intricate as they are in the situation described in the findings of § 2 of the Subversive Activities Control Act—when existing government is menaced by a world-wide integrated movement which employs every combination of possible means, peaceful and violent, domestic and foreign, overt and clandestine, to destroy the government itself—the legislative judgment as to how that threat may best be met consistently

> with the safeguarding of personal freedom is not to be set aside merely because the judgment of judges would, in the first instance, have chosen other methods. Especially where Congress, in seeking to reconcile competing and urgently demanding values within our social institutions, legislates not to prohibit individuals from organizing for the effectuation of ends found to be menacing to the very existence of those institutions, but only to prescribe the conditions under which such organization is permitted, the legislative determination must be respected. *United Public Workers* v. *Mitchell*, 330 U.S. 75; *American Communications Assn.* v. *Douds, supra.*

And subsequently, the Court again stated (*id.* at 102–103):

> Where the mask of anonymity which an organization's members wear serves the double purpose of protecting them from popular prejudice and of enabling them to cover over a foreign-directed conspiracy, *infiltrate into other groups, and enlist the support of persons who would not, if the truth were revealed, lend their support,* see § 2(1), (6), (7) [quoted, *supra*], it would be a distortion of the First Amendment to hold that it prohibits Congress from removing the mask. [Emphasis added.]

Assuming that some constitutional distinction can be drawn between the application of Section 7 to Communist-action and Communist-front organizations, we submit that the constitutionality of the application to Communist-fronts is more clear. The registration provisions are significantly narrower for Communist-front organizations. While Communist-

action organizations must disclose the names of their officers and members, Communist-front organizations need disclose only their officers. Thus, there is considerably less danger than in the *Communist Party* case that registration will result in "angry public opinion" being directed against ordinary members of the organization thereby interfering with the full exercise of First Amendment rights. See 367 U.S. at 102. Cf. *National Association for the Advancement of Colored People* v. *Alabama*, 357 U.S. 449; *Bates* v. *Little Rock*, 361 U.S. 516. This Court held in the *Communist Party* case that this result did not overweigh the vital considerations of national security upon which Congress based the statute; Congress could even more clearly require registration when the possible restraint on speech and assembly was so significantly less.

Petitioner claims (Br. 106) that this Court held in the *Communist Party* case that the Act's registration requirement may constitutionally be applied only to organizations which endanger national security because they are part of a "dangerous, foreign-controlled conspiracy, seeking by illicit means to overthrow the government." We agree. As the Court said, Congress may not constitutionally require organizations to register which merely "pursue[d] unpopular political objections or which expresse[d] an unpopular political ideology." 367 U.S. at 104. But this, of course, is not what has been found in this case. Instead, as we have emphasized above, the Board has concluded on the basis of ample evidence that petitioner is controlled by the Communist Party which is in turn controlled by the

world Communist movement. Thus, petitioner has been found to be a part of the very Communist conspiracy which this Court concluded in the *Communist Party* case advocated overthrow of the government and constituted a serious threat to national security.

b. Even if the Communist Party *case is not controlling, the registration provisions of the Act, as applied to Communist-front organizations, do not violate the First Amendment*

There can be no doubt that the registration requirements of the Act have an impact on petitioner and its leaders. The very finding of the Board that petitioner is controlled by, and supports, the Communist Party reveals to members and contributors the theretofore concealed relationship of petitioner to Communism (see pp. 102–106 above). Moreover, if petitioner fully registers, the names of its officers (but not members) will be disclosed as connected with a Communist-front organization. We do not deny that, as a consequence, speech and assembly will be somewhat affected.

On the other hand, Section 7 does not impose any direct restraints on speech and assembly. This provision, like the Act as a whole, is designed to regulate activities which are part of the world Communist conspiracy that has as a major purpose the overthrow of the government of the United States. While the activities may include forming an organization (*i.e.*, assembly) and taking positions (*i.e.*, speech or press), the statute is aimed at far more dangerous conduct. Thus, the issue under the First Amendment as in the

Communist Party case, is whether Congress may pass a statue directed at the danger to national security coming from the world Communist movement, even though the statute has an incidental effect on freedom of speech, press, and assembly.

(*i*) *The First Amendment permits indirect restraints on free speech, press, and assembly in some circumstances.*—It is a settled principle of constitutional law than that the freedoms guaranteed by the First Amendment are not absolute. *E.g., Schenck* v. *United States,* 249 U.S. 47, 52; *Dennis* v. *United States,* 341 U.S. 494, 508. As Mr. Justice Story wrote in 1840: "That this Amendment was intended to secure to every citizen an absolute right to speak, or write, or print, whatever he might please, without any responsibility, public or private, therefor, is a supposition too wild to be indulged by any reasonable man." Story, *The Constitution* (1840), p. 261. Even direct limitations on expressions otherwise protected by that Amendment may be permissible where clearly necessary to meet a clear and present danger of substantive evil. *Schenck* v. *United States, supra,* 249 U.S. at 52; *Dennis* v. *United States, supra,* 341 U.S. at 509–510. A *fortiori,* indirect limitations come within the rule. *American Communications Assn.* v. *Douds,* 339 U.S. 382, 402–404.

The law is filled with examples of statutes which place limited, indirect restraints on speech or the press, but which are nevertheless valid because the statute's objective lies within the power of Congress, and the restraint is a necessary and appropriate con-

comitant of the exercise of the power. The Federal Regulation of Lobbying Act (Act of August 2, 1946, Title III, Section 305, 307–308, 60 Stat. 840–842; 2 U.S.C. 264, 266–267) validly requires all "those who for hire attempt to influence legislation or who collect or spend funds for that purpose" to spread on the record pertinent information as to "who is being hired, who is putting up the money, and how much," notwithstanding the incidental inhibitory effect of this requirement. *United States* v. *Harriss,* 347 U.S. 612, 625–626. The Federal Corrupt Practices Act validly requires all political committees which accept contributions or make expenditures for the purpose of influencing national elections to keep exact accounts of all such contributions and to report publicly the names and addresses of all contributors as well as of persons to whom such expenditures are made (Act of February 28, 1925, Title III, Sections 302–305, 43 Stat. 1070–1072; 2 U.S.C. 241–244), though here, too, the requirement unquestionably imposes indirect restraints upon political expression. *Burroughs* v. *United States,* 290 U.S. 534. Likewise, the Foreign Agents Registration Act (Act of June 8, 1938, 52 Stat. 631–633; 22 U.S.C. 611, *et seq.*) validly requires agents of foreign principals to register with the Attorney General and to submit detailed information relating to the agency relationship. *United States* v. *Peace Information Center,* 97 F. Supp. 225, 261–263 (D. D.C.); see also *Viereck* v. *United States,* 318 U.S. 236, 241, where the constitutionality of the Act was assumed. The postal laws

(Act of August 24, 1912, Section 2, 37 Stat. 553; now 39 U.S.C. 233, 234) validly require the publishers of newspapers and magazines, as a condition of their use of second-class mail facilities, publicly to disclose the names of the owners of these publications and to mark with the word "advertisement" all contents the insertion of which has been paid for. *Lewis Publishing Co.* v. *Morgan,* 229 U.S. 228.

The unfair-labor-practice provisions of the National Labor Relations Act have led to certain valid restraints on speech. *National Labor Relations Board* v. *Virginia Elec. & Power Co.,* 314 U.S. 469; *National Labor Relations Board* v. *Falk Corp.,* 308 U.S. 453. Newspapers are subject to regulation in the public interest, notwithstanding possible incidental restrictive effects on their freedom to publish. *Associated Press* v. *National Labor Relations Board,* 301 U.S. 103, 130–133; *Associated Press* v. *United States,* 326 U.S. 1, 19–20; *Mabee* v. *White Plains Publishing Co.,* 327 U.S. 178, 184; *Oklahoma Press Publishing Co.* v. *Walling,* 327 U.S. 186, 192–193; *Lorain Journal* v. *United States,* 342 U.S. 143, 155–156. Radio broadcasting stations engaging in certain practices can be denied licenses without unlawfully entrenching on First Amedment rights, despite the indirect restraint upon speech which may result from such denials. *National Broadcasting Co.* v. *United States,* 319 U.S. 190, 226–227. The National Labor Relations Act, as amended by the Labor Management Relations Act of 1947 (Act of July 5, 1935, Section 9(h), as amended by the Act of June 23, 1947, Section 101, 61 Stat.

146)[41] validly denied the benefits of that Act to labor organizations unless each officer took an oath that he was not a member of the Communist Party. *American Communications Assn.* v. *Douds,* 339 U.S. 382, 389–412. The Hatch Act validly forbids officers and employees in the executive branch of the Federal Government from taking an active part in political campaigns (Act of August 2, 1939, Section 9, 53 Stat. 1148; 5 U.S.C. 118i), notwithstanding the obvious restraints imposed by this prohibition on such officers' and employees' freedom of speech and political expression. *United Public Workers* v. *Mitchell,* 330 U.S. 75, 94–104. The Court has also upheld a state statute requiring that associations, having an oath-bound membership, file with a state official sworn copies of their constitutions, oaths of membership, and the names of all officers and members. *Bryant* v. *Zimmerman,* 278 U.S. 63, 72–73.

In *National Association for the Advancement of Colored People* v. *Alabama,* 357 U.S. 449, an order of a state court for production of the names and addresses of all members and agents of the N.A.A.C.P. was held to be unconstitutional. See also *Bates* v. *City of Little Rock,* 361 U.S. 516; *Louisiana* v. *National Association for the Advancement of Colored People,* 366 U.S. 293. But the Court based its determination in the *Alabama* case on the ground that "we are unable to perceive that the disclosure of * * * petitioner's rank-and-file members has a substantial

[41] This provision has since been repealed. 73 Stat. 525.

bearing" on any interest of the State. 357 U.S. at 464. Significantly, the Court declared that *Bryant* v. *Zimmerman* "involved markedly different considerations in terms of the interest of the State in obtaining disclosure. * * * In its opinion [in *Bryant*], the Court took care to emphasize the nature of the organization [the Ku Klux Klan] which New York sought to regulate. The decision was based on the particular character of the Klan's activities, involving acts of unlawful intimidation and violence, * * * which the Court itself took judicial notice." *Id.* at 465.

In *Shelton* v. *Tucker,* 364 U.S. 479, the Court also held that a State may not constitutionally ask all teachers in State-supported schools to disclose every organization to which they had belonged or contributed regularly within the past five years. Even though disclosure might interfere with the right of association, the Court assumed that the State could ask certain teachers about all their organizational contributions and some teachers about all their associational ties pursuant to its power to inquire into the fitness and competence of teachers. *Id.* at 487. However, the Court held that the particular State requirement was invalid because it was indiscriminately broad and less drastic measures could accomplish the same objectives. Thus, that case, like the others described above, is grounded on the premise that the state and federal governments may require disclosure of information, despite some resulting limitation on rights protected by the First Amendment, when the requirement is necessary to further an important gov-

ernmental interest.[42] See also *Barenblatt* v. *United States,* 360 U.S. 109, 125–134; *Wilkinson* v. *United States,* 365 U.S. 399, 413–415; *Braden* v. *United States,* 365 U.S. 431, 435; *Gibson* v. *Florida Legislature Investigation Committee,* 372 U.S. 539, 544–546, 547, 557–558.

In all these and similar cases, the controlling consideration was not whether some indirect, incidental restraint on complete freedom of speech or of the press might result from the enforcement of the challenged law. That there would be some such restraint was apparent. The question was whether the objective of the legislature was one within its power to seek to effect; and, if so, whether the incidental restraint was appropriate and reasonable under all the circumstances, including the end sought to be achieved by the law, as well as the nature, impact, and scope of the restraint. As this Court described the problem in an analogous context in *American Communications Assn.* v. *Douds, supra,* 339 U.S. at 400:

> In essence, the problem is one of weighing the probable effects of the statute upon the free exercise of the right of speech and assembly against the congressional determination that political strikes are evils of conduct which cause substantial harm to interstate commerce and that Communist and others identified by § 9(h) pose continuing threats to that public interest when in positions of union leadership.

[42] Similarly, in *Talley* v. *California,* 362 U.S. 60, this Court held invalid a statute forbidding the distribution of anonymous handbills on the ground that it was indiscriminately broad. But the Court declined to pass on such an ordinance designed and limited to preventing fraud or other torts. *Id.* at 64.

> We must, therefore, undertake the "delicate and difficult task * * * to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights."

(*ii*) *The evil at which the Act strikes is one of the gravest that could befall the nation.*—The evil aimed at by the Hatch Act was the bad effect on government service of "political activity by government employees." *United Public Workers* v. *Mitchell, supra,* 330 U.S. at 95. The Regulation of Lobbying Act was aimed at the danger that "the voice of the people" might go unheard by Congress due to being "drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal." *United States* v. *Harriss, supra,* 347 U.S. at 625. The harm sought to be eliminated by the Corrupt Practices Act was "the corrupt use of money to affect elections." *Burroughs* v. *United States, supra,* 290 U.S. at 548. The injury at which the Foreign Agents Registration Act was directed was the "spreading [of] foreign propaganda" in this country by unidentified agents of foreign principals. *Viereck* v. *United States, supra,* 318 U.S. at 241. The evil aimed at by the non-Communist affidavit clause of the amended National Labor Relations Act was the obstruction of commerce due to "political strikes." *American Communications Assn.* v. *Douds, supra,* 339 U.S. at 387–389. In all these cases, the fact that incidental and indirect restraints upon "First Amendment freedoms" resulted from the steps taken by Congress to combat those evils was held not to invalidate

the legislative remedy adopted. However, the evils at which those statutes were directed, grave as they were, were relatively trivial compared to the evil at which this Act attempts to strike.

That evil is nothing less than the threatened destruction, through force, violence, and deceit, of our constitutional form of government, the loss of our national independence and of our cherished liberties, and the passing of the nation under the domination of a ruthless foreign dictatorship (Section 2). The world Communist movement, including its domestic manifestations, declared Congress in summing up the purposes of the Act, presents "a clear and present danger to the security of the United States and to the existence of free American institutions, and make[s] it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such worldwide conspiracy and designed to prevent it from accomplishing its purpose in the United States" (Section 2(15)).

It is obviously a matter of the gravest concern that there exists in this country such a highly organized conspiratorial group controlled and dominated by a foreign country or foreign organization, the principal efforts of which are directed to furthering the interests of that foreign country or organization to the detriment of the United States. As we have seen (pp. 36–54 above), Congress has for over thirty years regarded the threat to the United States represented

by the Communist movement as a legitimate subject of Congressional inquiry and legislation. See also *Internal Security Manual,* S. Doc. No. 47, 83d Cong., 1st Sess., pp. 216–218, where the many hearings held by committees of Congress investigating subversive activities from 1930 to 1953 are synopsized. The general power of Congress not only to conduct inquiries in this area, but to legislate on the basis of the information thus obtained, has been repeatedly recognized by this Court as well as by others. *E.g., Aptheker* v. *Secretary of State,* 378 U.S. 500, 509; *Kennedy* v. *Mendoza-Martinez,* 372 U.S. 144, 159–160; *Barenblatt* v. *United States,* 360 U.S. 109; *Galvan* v. *Press,* 347 U.S. 522, 529; *Carlson* v. *Landon,* 342 U.S. 524, 534–536; *Harisiades* v. *Shaughnessy,* 342 U.S. 580, 590; *Dennis* v. *United States,* 341 U.S. 494; *American Communications Assn.* v. *Douds,* 339 U.S. 382, 387–389; *Lawson* v. *United States,* 176 F. 2d 49, 51–52 (C.A. D.C.), certiorari denied, 339 U.S. 843; *United States* v. *Josephson,* 165 F. 2d 82, 88–92 (C.A. 2), certiorari denied, 333 U.S. 838. Moreover, both this Court and the lower federal courts, have repeatedly recognized that the Communist Party is actively engaged in the world-wide Communist attempt to overthrow the Government of the United States. Therefore, the Court has repeatedly refused to treat it as an ordinary political party in considering the constitutionality of statutes or legislative investigations under the First Amendment.

Mr. Justice Jackson in the concurring portion of his opinion in *American Communications Assn.* v.

Douds, 339 U.S. 382, 423, pointed out that the Communist Party is different "from any other substantial party we have known, and hence [it] may constitutionally be treated as something different in law." He found that Congress, on the basis of material before it, could rationally have concluded that "The goal of the Communist Party is to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate"; "The Communist Party alone among American parties past or present is dominated and controlled by a foreign government"; "Violent and undemocratic means are the calculated and indispensable methods to attain the Communist Party's goal"; and "Every member of the Communist Party is an agent to execute the Communist program." *Id.* at 425, 427, 429, 431. See also Mr. Justice Jackson concurring in *Dennis* v. *United States,* 341 U.S. 494, 563–566.

In affirming the Smith Act convictions of the principal leaders of the Communist Party, Judge Learned Hand stated in *United States* v. *Dennis,* 183 F. 2d 201, 212–213 (C.A. 2), affirmed, 341 U.S. 494:

> One may reasonably think it wiser in the long run to let an unhappy, bitter outcast vent his venom before any crowds he can muster and in any terms he wishes, be they as ferocious as he will; one may trust that his patent impotence will be a foil to anything he may propose. * * * Here we are faced with something very different. The American Communist Party * * * is a highly articulated, well contrived, far spread organization, numbering thousands of ad-

> herents, rigidly and ruthlessly disciplined, many of whom are infused with a passionate Utopian faith that is to redeem mankind. * * * The violent capture of all existing governments is one article of the creed of that faith, which abjures the possibility of success by lawful means. * * * The question before us, and the only one, is how long a government, having discovered such a conspiracy, must wait.

Then, after reviewing the great world-wide Communist danger at the time of the indictment in 1948, Judge Hand went on (*id.* at 213):

> We do not understand how one could ask for a more probable danger, unless we must wait till the actual eve of hostilities. * * * [W]e shall be silly dupes if we forget that again and again in the past thirty years, just such preparations in other countries have aided to supplant existing governments, when the time was ripe. Nothing short of a revived doctrine of *laissez faire,* which would have amazed even the Manchester School at its apogee, can fail to realize that such a conspiracy creates a danger of the utmost gravity and of enough probability to justify its suppression.

Mr. Justice Frankfurter, speaking for the Court in *Galvan v. Press,* 347 U.S. 522, 529, stated:

> On the basis of extensive investigation Congress [found] in § 2(1) of the [Internal Security] Act that the "Communist movement * * * is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism,

> and any other means deemed necessary, to establish a Communist totalitarian dictatorship," and made present or former membership in the Communist Party, in and of itself, a ground for deportation. Certainly, we cannot say that this classification by Congress is so baseless as to be violative of due process and therefore beyond the power of Congress.

See also *Carlson* v. *Landon,* 342 U.S. 524, 535–537; *Harisiades* v. *Shaughnessy,* 342 U.S. 580, 590. Subsequently, in concurring in *Sweezy* v. *New Hampshire,* 354 U.S. 234, Mr. Justice Frankfurter (joined by Mr. Justice Harlan) indicated that a fundamental distinction existed between investigation by a Congressional committee of a witness' political beliefs and into his connection with the Communist Party. "Whatever, on the basis of massive proof and in the light of history, of which this Court may well take judicial notice, be the justification for not regarding the Communist Party as a conventional political party, no such justification has been afforded in regard to the Progressive Party." *Id.* at 266.

The earlier history of this Court's attitude toward the Communist Party and the attempts of Congress to deal with it are described in *Barenblatt* v. *United States,* 360 U.S. 109, in which the Court upheld the authority of a Congressional committee to inquire whether a witness belonged to the Communist Party. Speaking for the Court, Mr. Justice Harlan said (*id.* at 128–129):

> * * * [*T*]*his Court in its constitutional adjudications has consistently refused to view*

> *the Communist Party as an ordinary political party, and has upheld federal legislation aimed at the Communist problem which in a different context would certainly have raised constitutional issues of the gravest character.* * * * To suggest that because the Communist Party may also sponsor peaceable political reforms the constitutional issues before us should now be judged as if that Party was just an ordinary political party from the standpoint of national security, is to ask this Court to blind itself to world affairs which have determined the whole course of our national policy since the close of World War II * * *. [Emphasis added.]

While these cases all deal with legislation concerning the Communist Party or its members, their reasoning is equally applicable to Communist-front organizations as they are defined in the Act. Congress found that Communist-action organizations, such as the Communist Party, secretly operate through Communist-front organizations. Indeed, by definition (Section 3(4)), these Communist-fronts are controlled by the Communist-action organizations and operate for the purpose of aiding and supporting these organizations. Thus, they are indirectly, but plainly, under the control, and carry out the purposes, of the world Communist movement just as much as Communist-action organizations.

Moreover, the function of Communist-front organizations in Communist strategy to overthrow democratic governments and their actual history demonstrate the serious danger they pose. See Appendix B below. Communist fronts were first organized to at-

tract additional support to Communist causes when the Communist movement saw that the workers in other countries were not ready to revolt after the Soviet Revolution. These fronts support various Communist positions, provide sources for the recruitment of new Party members, and give financial, legal, and other aid to the Party itself. Petitioner's operations fully conform to this pattern. See pp. 4–20, 34–35 above.

It is of course true that the danger from petitioner alone would be minimal. But, as we have seen, petitioner does not operate in isolation. It has been found to be an integral part of the world-wide Communist movement. Considering the problem as a whole, as Congress was entitled to do (*e.g.*, *National Labor Relations Board* v. *Fainblatt*, 306 U.S. 601, 606; *Wickard* v. *Filburn*, 317 U.S. 111, 127; *United States* v. *Darby*, 312 U.S. 100, 123), Communist-front organizations perform extremely important roles within the movement and thus contribute substantially to the danger posed by the movement to the security of the United States.

(*iii*) *In the light of the evil, the registration requirement does not invalidly restrict free speech, press, or association.*—In our survey of the cases in which the Court upheld legislation touching upon political association and expression of ideas (see pp. 114–120 above), "disclosure" cases are prominent. *United States* v. *Harriss*, 347 U.S. 612, 625 (Regulation of Lobbying Act); *Burroughs* v. *United States*, 290 U.S. 534 (Federal Corrupt Practices Act); *Lewis Publishing Co.* v. *Morgan*, 229 U.S. 288 (ownership-

disclosure requirements of the postal laws); *Bryant* v. *Zimmerman*, 278 U.S. 63 (New York Anti-Ku-Klux-Klan statute); cf. *Viereck* v. *United States*, 318 U.S. 236 (Foreign Agents Registration Act). The basic rationale underlying these decisions is that it is in the interest of both free speech and free association that Congress and the public be adequately and correctly informed, where non-disclosure poses serious dangers to the public interest.[42]

In light of our knowledge of the evils of the world Communist movement (see pp. 121–126 above), there would seem to be little doubt that the accepted device of registration and disclosure properly may be applied to the Communist Party and to its secret subsidiary front organizations, now that the Party has been found, after full hearing, to be directed and controlled by the Soviet Union and to be operating primarily to advance the objectives of the world Communist movement and its subsidiaries have been found to be instrumentalities to carry out the Party's purposes. See Sutherland, *Freedom and Internal*

[42] In addition to judicial approval, the principle of registration and disclosure has been widely recognized by legal writers as a constitutional and desirable remedy against potential abuses of political freedoms. See, *e.g.*, *To Secure These Rights*, Report of the President's Committee on Civil Rights (1947), p. 164; Smith, *Democratic Control of Propaganda Through Registration and Disclosure*, 6 Pub. Opin. Quarterly 27; Institute of Living Law, *Combating Totalitarian Propaganda: The Method of Suppression*, 37 Ill. (Northwestern Univ.) L. Rev. 193, 213; Ernst and Katz, *Speech: Public and Private*, 53 Colum. L. Rev. 620, 626; Nutting, *Freedom of Silence: Constitutional Protection Against Governmental Intrusions in Political Affairs*, 47 Mich. L. Rev. 181, 204–213.

Security, 64 Harv. L. Rev. 383, 406–407. Congress, on the basis of extensive investigations over a period of many years (see pp. 36–51 above), had concluded that much of the danger from Communist activity in the United States is the result of its secrecy. Registration, which means in effect disclosure, was, therefore, an obviously reasonable method of coping with this grave problem. If the leaders of the Communist Party may be imprisoned for conspiring to advocate the overthrow of the Government by force and violence (*e.g., Dennis* v. *United States,* 341 U.S. 494), certainly the Party and its subsidiaries may be compelled to register, disclose their officers, and give a financial accounting. Whatever diminution of their influence or effectiveness results from this publicity—including a possible falling-off in "peaceful" and "non-seditious" activities—is a valid consequence of the government's and the public's right to be informed about such organizations' activities and connections. Their seditious connection with the Soviet Union plainly warrants the kind of disclosure Congress has required.

Petitioner, however, contends (Br. 106–108) that because it has legitimate objectives, namely, the defense of aliens and the promotion of changes in our immigration laws, it cannot be required to register. No one would suggest that every immediate objective of the Communist Party itself is illegal. It may, as part of its appeal for popular support, favor and work for low-cost public housing, non-discrimination by reason of race, and many other things. The Party, however, urges such objectives because in its judgment

they will help it to its final objective—overthrow of the government of the United States. Similarly, Communist-front organizations may carry out many legitimate and desirable activities, but an organization may not be ordered to register because of such conduct. On the contrary, such activities are relevant only insofar as they constitute evidence concerning the relationship of the organization to the Communist movement. For the Act requires the Board to find, before ordering an organization to register as a Communist front, that it was controlled by, and primarily operates to give support to a Communist-action organization, which in turn was controlled by and supports, the government controlling the world Communist movement. Section 2 describes the purpose of the world Communist movement as, "by treachery, deceit, infiltration * * * espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship * * * throughout the world" (Section 2(1)). On the basis of convincing evidence (see pp. 60–97 above), the Board concluded that petitioner came within this definition of a "Communist-front organization" (R. 64–66).

Thus, contrary to petitioner's contention, it is clear that the Act does not attempt to suppress, regulate, or even require disclosure by organizations whose purpose is completely peaceful and harmless. Rather, it requires disclosure from organizations, like petitioner, whose *present activity* is for the purpose of advancing the objectives of the world Communist movement. While such organizations' activities may

be peaceful and not in violation of any criminal law at a particular time, we submit that Congress has the constitutional power to require disclosure from such organizations which are actively working for overthrow of the Government and which, together with the world Communist movement as a whole, produce a serious danger that their purpose will be achieved."

Petitioner and the *amicus* also contend (Pet. Br. 102–105; A.C.L.U. Br. 39–41) that the Court should apply the clear-and-present-danger test in determining the constitutionality of the registration requirement. However, they cite no cases, and we know of none, where this standard has been applied to incidental restraint on rights protected by the First Amendment. More pointedly, this standard has not been applied either in the *Communist Party* case or any of the other disclosure cases decided by this Court. The cases which petitioner and the *amicus* cited involved criminal prosecutions for,[45] or other direct restraints[46] on, speech or assembly. In contrast, this Act merely requires registration.

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[44] The *amicus* states (A.C.L.U. Br. 38–39) that the Act is unconstitutional because it limits First Amendment rights and is not drawn as narrowly as possible to remedy the supposed evil. In fact, however, the statute is coextensive with the evil—registration of organizations which are controlled by other organizations which in turn are controlled by the government controlling the world Communist movement.

[45] *E.g.*, *DeJonge* v. *Oregon*, 299 U.S. 353; *Schenck* v. *United States*, 249 U.S. 47; *Herndon* v. *Lowry*, 301 U.S. 242.

[46] *Thomas* v. *Collins*, 323 U.S. 516 dealt with the wholly different problem resulting from a state requirement that individuals register as a condition of exercising their normal righ-

Whatever restraint does result from the requirement of registration is the indirect result of a statute directed toward a broader and more dangerous problem. And although petitioner claims that it is entitled to a special rule on the ground that the registration order will destroy it as an organization, many of the cases in which the clear-and-present-danger standard has not been applied, including the *Communist Party* case itself, involved equally serious consequences. See also, *e.g., National Association for the Advancement of Colored People* v. *Alabama, supra; Bates* v. *Little Rock, supra.*

The *amicus* contends (A.C.L.U. Br. 10), citing *Wieman* v. *Updegraff*, 344 U.S. 183, that the statute is unconstitutional because it brands members of Communist-front organizations who have no knowledge of its Communist character. First, this is a complete misreading of the statute: the Act labels only the organization itself and does not even require the disclosure of the names of members. Second, any

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to make public speeches enlisting support for a lawful and peaceful movement. The Court made clear that the vice of the statute was that the requirement was imposed directly on speech rather than on activities which might incidentally include speech (323 U.S. at 540):

"Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or identification requirement may be imposed." Moreover in *Thomas* v. *Collins*, there was no problem of sedition, subversion, or of a domestic organization controlled by a foreign dictatorship and dedicated to forcible overthrow of this Government. See Sutherland, *Freedom and Internal Security*, 64 Harv. L. Rev. 383, 403–404.

members who did not previously know of the control of the organization by the Communist Party, could readily resign upon the Board's determination but before registration, and thus avoid any stigma that might attach to continued membership after learning petitioner's true character.

2. The registration provisions do not violate the First Amendment or the due process clause of the Fifth Amendment on the ground of vagueness

a. The definition of "Communist-front organization" in Section 3(4)

Petitioner contends (Br. 108–109) that the registration provisions of the Act violate the First Amendment and the due process clause of the Fifth Amendment because they depend on the definition of Communist-front organization in Section 3(4), which, it alleges, is unconstitutionally vague. More specifically, citing this Court's recent decisions in *Cramp* v. *Board of Public Instruction,* 368 U.S. 278, and *Baggett* v. *Bullitt,* 377 U.S. 360, petitioner states that the vagueness of the aid component of Section 3(4) is demonstrated by the fact that the Board found "legal defense of the foreign born" (Br. 109) to satisfy the statute.

This contention, like petitioner's contention concerning freedom of speech and assembly discussed above, is foreclosed by this Court's holding in the *Communist Party* case. There, the Communist Party contended that the definition of Communist-action organization was unconstitutionally vague. It pointed [47] to the "objectives" component of the defini-

[47] See Brief for Petitioner, No. 12, Oct. Term 1960, pp. 30–31, 85.

tion which required proof that the alleged Communist-action organization was operating "primarily to advance the objectives of [the] world Communist movement referred to in Section 2" (Section 3(3)). Section 2(1) stated that the movement's "purpose * * * is by treachery, deceit, infiltration * * * espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship * * * throughout the world." The Court specifically noted the Party's contention. 367 U.S. at 71, 82. Nevertheless, despite a lengthy 115-page opinion which discussed numerous issues, the Court "carefully considered" this contention along with several other constitutional claims and summarily rejected it as not requiring "detailed discussion." *Id.* at 115.

The aid component of the definition of Communist-front organizations is basically similar to the objectives component relating to Communist-action organizations. Both definitions require proof of Communist control and then require in the "objectives" and "aid" components that the organization be shown to serve its master. The requirement that the organization be "primarily operated for the purpose of giving aid and support to a Communist-action organization" (Section 3(4)) is just as clear as the requirement that a Communist-action organization operate primarily to establish a Communist totalitarian dictatorship by any means deemed necessary (Sections 2(1), 3(3)).

Second, independent of the *Communist Party* case, the aid component of Section 3(4) is not unconsti-

tutionally vague. It is well established that "[n]o one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." *Lanzetta* v. *New Jersey*, 306 U.S. 451, 453. On the other hand, this Court has allowed Congress great latitude in delegating power to administrative agencies on the basis of standards at least as general as that involved here. In *American Power Co.* v. *Securities and Exchange Commission*, 329 U.S. 90, 104–105, the Court held constitutional a provision giving the Commission power to insure that the corporate structure or continued existence of any company in a holding company system does not "unduly or unnecessarily complicate the structure" or "unfairly or inequitably distribute voting power among security holders." The Court stated (*id.* at 105):

> The legislative process would frequently bog down if Congress were constitutionally required to appraise beforehand the myriad situations to which it wishes a particular policy to be applied and to formulate specific rules for each situation. Necessity therefore fixes a point beyond which it is unreasonable and impracticable to compel Congress to prescribe detailed rules; it then becomes constitutionally sufficient if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority.

Similarly, in *Sunshine Coal Co.* v. *Adkins*, 310 U.S. 381, 399–400, the Court said:

> The fact that many instances may occur where its [the definition of bituminous coal] application may be difficult is merely to emphasize the nature of the administrative problem and the reason for the grant of latitude by the Congress. The difficulty or impossibility of drawing a statutory line is one of the reasons for supplying merely a statutory guide. * * * That guide is sufficiently precise for an intelligent determination of the ultimate questions of fact by experts.

While stricter standards may perhaps be necessary for delegation of power outside the area of economic regulation, nevertheless these same basic considerations apply. The Act, as this Court held in the *Communist Party* case, "is a regulatory, not a prohibitory, statute." 367 U.S. at 56. And Section 7 does no more than require registration and disclosure of officers and contributors.

The statute here provides adequate standards. It defines a Communist-front organization as one both controlled by a Communist-action organization (as already found by the Board) and "primarily operated for the purpose of giving aid and support to a Communist-action organization" (Section 3(4)). Pursuant to this definition, the Board did not, as petitioner suggests, find that petitioner aided and supported the Communist Party by merely defending the foreign born. Instead, it found that members of the Communist Party ran and operated petitioner

as representatives of the Party and used petitioner to serve the purposes of the Party by defending Party members and attacking legislation which hindered Party activities. See the Statement above, pp. 4–20.

Petitioner's reliance on *Cramp* and *Baggett* is misplaced. First, in those cases, this Court held that oaths requiring state employees to swear that they had never given aid or support, etc., to the Communist Party or aided in the commission of any act to overthrow the government of the United States or the State were unconstitutionally vague. While those cases did not involve criminal statutes, they did concern oaths, the false swearing of which would subject a person to a criminal penalty. Since, as a consequence, persons could be subjected to criminal punishment on the basis of activities which, as far as they could tell, were not inconsistent with their oaths, this Court properly relied on cases involving criminal statutes. See 368 U.S. at 283–284, 287–288.

Second, this Court emphasized in *Cramp* that the oath said "nothing of membership or affiliation with the Communist Party, past or present." 368 U.S. at 286. Indeed, in both *Cramp* and *Baggett,* the Court said that the oath might be construed to cover incidental support of the Party or its members, such as voting for a Party candidate, teaching Party members in school, and the like. *Ibid.*; 377 U.S. at 368. In marked contrast, Section 3(4) requires proof that any organization alleged to be a Communist front is controlled by, and "is primarily operated for the pur-

pose of giving aid and support to a Communist-action organization."[48] Thus, while the innocent activities noted in *Cramp* or *Baggett* may in some conceivable circumstances constitute evidence, the statute cannot be applied to them without much more. It cannot be applied to organizations or individuals who merely happen to agree with certain views or activities of the Party or even give the Party substantial support. Instead, the statute both in terms and as applied here, covers only organizations which are proved to be instrumentalities of Communist-action organizations like the Communist Party.

b. The evidentiary criteria in Section 13(f)

The *amicus* contends (A.C.L.U. Br. 43–50) that the factors which the Act directs the Board to consider in determining whether an organization is a Communist-front organization (Section 13(f)) are also unconstitutionally vague.[49] Petitioner has not

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[48] Thus, contrary to the statement of the *amicus* (A.C.L.U. Br. 47, note 63), the organization must have *scienter* in the sense of knowingly 'carrying out the purposes of a Communist-action organization such as the Communist Party.

[49] Section 13(f) of the Act provides:

"In determining whether any organization is a 'Communist-front organization', the Board shall take into consideration—

"(1) the extent to which persons who are active in its management, direction or supervision whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

"(2) the extent to which its support, financial or otherwise, is derived from any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

raised this contention, and we think it inappropriate for an entirely new constitutional issue to be injected into this case by an organization which is not a party.

A similar contention was made in the *Communist Party* case, directed at the evidentiary factors in Section 13(e) which relate to Communist-action organizations.[50] The factors in Section 13(e) are just as general as those in Section 13(f). Nevertheless, the Court rejected this contention, like the other arguments concerning vagueness, without discussion. 367 U.S. at 115.

Finally, independent of this Court's decision in the *Communist Party* case, Section 13(f) is constitutional. That Section provides merely that the Board must "take into consideration" the four evidentiary matters. As this Court said in the *Communist Party* case (367 U.S. at 14; cf. *id.* at 58, 61), the items listed in Section 13(f) are simply relevant guides in determining whether an organization is a Communist-front organization. The exclusive "test" for making that determination is supplied by the definition of such an organization in Section 3(4). *viz.*, whether it is substantially directed, dominated, or controlled by a Communist-action organization and operated primar-

"(3) the extent to which its funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

"(4) the extent to which the position taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2."

[50] See Brief for Petitioner, No. 12, Oct. Term 1960, pp. 139–146.

ily to give aid and support to that organization. This Court repeatedly has upheld as not unduly vague, similarly generalized "guides" which administrators are to consider in applying the ultimate statutory test. See, *e.g., Hampton & Co.* v. *United States,* 276 U.S. 394; *Mulford* v. *Smith,* 307 U.S. 38; *Sunshine Coal Co.* v. *Adkins,* 310 U.S. 381; *Opp Cotton Mills* v. *Administrator,* 312 U.S. 126; *Yakus* v. *United States,* 321 U.S. 414; *American Power Co.* v. *Securities and Exchange Commission,* 329 U.S. 90; *Fahey* v. *Mallonee,* 332 U.S. 245; *Lichter* v. *United States,* 334 U.S. 742. For example, in *Hampton & Co.* v. *United States, supra,* 276 U.S. at 401–402, the Court upheld a Congressional direction to the President, in adjusting tariffs, to "take into consideration," "in so far as he finds it practicable," a variety of economic matters—including the catch-all "any other advantage or disadvantages in competition."

The *Opp Cotton Mills* case, *supra,* is particularly pertinent. There, the Court upheld the requirement in the Fair Labor Standards Act of 1938 that, in fixing minimum wage rates, the Wages and Hours Administrator "consider among other relevant factors" certain economic considerations. 312 U.S. at 136. "It is urged," said the Court, "that the statute does not prescribe the relative weight to be given to the specified factors or the other unnamed 'relevant factors.' It is said that this * * * leave[s] the function which the committee and Administrator are to perform so vague and indefinite as to be practically without any Congressional guide or control." 312 U.S. at 143–144.

Rejecting this argument, the Court said (*id.* at 145–146):

> The fact that Congress accepts the administrative judgment as to the relative weights to be given to these factors in each case when that judgment in other respects is arrived at in the manner prescribed by the statute, instead of attempting the impossible by prescribing their relative weight in advance for all cases, is no more an abandonment of the legislative function than when Congress accepts and acts legislatively upon the advice of experts as to social or economic conditions without reexamining for itself the data upon which that advice is based.

3. Petitioner was not denied procedural due process because it was not allowed to relitigate whether the Communist Party is a Communist-action organization

Petitioner contends (Br. 110–111) that the Act violates the due process clause of the Fifth Amendment because petitioner "was bound by the Board's finding, made in the proceeding against the Communist Party, that the Communist Party is a Communist-action organization." We submit that this contention is without merit.

The Court of Appeals for the District of Columbia Circuit has repeatedly considered and rejected this argument. *National Council* v. *Subversive Activities Control Board*, 322 F. 2d 375, 392; *Jefferson School of Social Science* v. *Subversive Activities Control Board*, 331 F. 2d 76, 82; *Albertson* v. *Subversive Activities Control Board*, 332 F. 2d 317, pending on petition for

a writ of certiorari, No. 265, this Term.[51] As Judge Bazelon stated in his concurring opinion in *Weinstock* v. *Subversive Activities Control Board,* 331 F. 2d 75, 76 (C.A. D.C.):

> I believe that due process does not demand relitigation of the Party's status in the present case because (a) the organization here affected by the Party's status has been found to be substantially controlled by the Party, (b) the Party argued the question of its status in a 14-month 14,000 page hearing and the Supreme Court affirmed the Board's finding, and (c) there is no indication that the organization here affected by the Party's status could produce evidence which would throw additional light on that matter.

["D]ue process of law depends on circumstances. It varies with the subject-matter and the necessities of the situation." *Moyer* v. *Peabody,* 212 U.S. 78, 84. The Subversive Activities Control Act establishes specific procedures for determining which organizations fall within the class of organizations required to register. These procedures involve full hearings before an expert administrative tribunal and judicial review of its determinations. The Communist Party was found, pursuant to these procedures, to be a Communist-action organization. The tortuous history of the original determination (see the *Communist Party* case, 367 U.S. at 19–22) demonstrates the total impracticability of allowing each

[51] The *Albertson* case involved review of an order by the Board that a particular member of the Party register since the Party itself had not done so (see Section 8).

Communist-front organization to relitigate (14 have been determined by the Board up to the present [52]) that case before it can itself be required to register.

Beyond this, a Communist-front organization must be found to be controlled by, and operate primarily to give aid and support to, a Communist-action organization. Surely, the Communist Party can be fairly said to have represented organizations which are in effect its subsidiaries in the litigation resulting in the final order to it to register. As this Court stated in *Hansberry* v. *Lee*, 311 U.S. 32, 42–43, "It is familiar doctrine of the federal courts that members of a class not present as parties to the litigation may be bound by the judgment where they are in fact adequately represented by parties who are present * * *; or where the interest of the members of the class, some of whom are present as parties, is joint, or where for any other reason the relationship between the parties present and those who are absent is such as legally to entitle the former to stand in judgment for the latter." Accord, *Restatement, Judgments* (1942), § 86. Thus, a stockholder is bound by a judgment in which the corporation was a party on the ground that "as stockholder he has voluntarily assumed a corporate relationship which is subject to the local regulatory power, in the exercise of which the procedure has been attached, as an incident, to his membership in the corporation * * *. [T]he benefits of member-

[52] All the proceedings before the Board in which an organization has been found to be a Communist-front organization are described in Appendix C below.

ship carry with them the risk that the corporation may stand in judgment for him." *Christopher* v. *Brusselback,* 302 U.S. 500, 504, and the cases therein cited. *A fortiori,* here, it is proper to deem the Communist-front organizations bound by the judgment determining the character of the organization which controls them. And regardless of the rule in the absence of statute, at least, Congress' determination to have the organization litigate the applicability of the Act for all its subsidiary organizations is not so unfair as to violate due process.

Petitioner also suggests (Br. 110–111) that the Act is invalid since, if an organization is found to come within the Act, the statute applies indefinitely. The non-Communist affidavit provision in the Labor Management Relations Act applied specifically to all members of the Communist Party. This Court upheld its constitutionality despite the fact that only Congress could remove the Party from the provisions of the statute. *American Communications Assn.* v. *Douds,* 339 U.S. 382. Similarly, Congress could reasonably decide that since the Communist movement is a grave danger to national security and since its operations are extremely difficult to trace because of its secret and conspiratorial nature, all organizations which are found to satisfy the standards of the Subversive Activities Control Act and which refuse to register should continue under the disabilities of the Act.

In any event, Congress has provided a means by which an organization can relitigate its status under the Act. Section 13(b) allows an organization regis-

tered under the Act to apply to the Attorney General as often as once a year to cancel its registration and, if he refuses, the organization "may petition the Board for a redetermination of its amenability to the registration requirements of the Act, pursuant to a hearing which, again, is subject to judicial review." *Communist Party* v. *Subversive Activities Control Board, supra,* 367 U.S. at 87. Consequently, "[f]ar from attaching to the past any ineradicable actions of an organization, the application of the registration section is made to turn upon continuingly contemporaneous fact; its obligations arise only because, and endure only so long as, an organization presently conducts operations of a prescribed character." *Ibid.* As this Court stated in the *Communist Party* case, 367 U.S. at 87, the Act offers "adequate means of relief" "[i]f the Party should at any time choose to abandon" the activities which made it subject to the Act.

It is true that Section 13 is not now available to the Communist Party because it has refused to register. This, however, was the Party's choice. But even if Congress were constitutionally required to provide the Party a means to relitigate the 1953 determination and the remedy in Section 13 were inadequate because it is confined to organizations which have registered, it is the Party which would have been denied a constitutional right. The Party could vindicate such right by bringing an action challenging the present applicability of the Act. We have shown that Communist-front organizations could not challenge the

original determination of the Board concerning the character of the Party and the applicability of the Act. Equally, such organizations are bound by the Party's decision not to relitigate the 1953 decision.

4. The Board's definition of "organization" did not violate the First Amendment or the due process clause of the Fifth Amendment

As we have discussed above (pp. 93–97), the Board, following the definition of "organization" in Section 3(2) of the Act, considered the local committees as part of a single organization with the American Committee. The Board reasoned that the American Committee and the local committees "are associated together for joint action" and "constitute a voluntary association" (R. 27). Petitioner contends (Br. 53–56), that the Board's conclusion that the American Committee and local committee were one organization, without requiring proof that the American Committee controlled the local committees, violates the First Amendment and the due process clause of the Fifth Amendment.

Since petitioner did not raise this contention in the petition for a writ of certiorari, the Court, under its settled practice, will not consider it. See Rules 23 and 40 of the Revised Rules of this Court. *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U.S. 175, 177; *Crown Cork & Seal Co.* v. *Ferdinand Gutmann Co.*, 304 U.S. 159; *National Licorice Co.* v. *National Labor Relations Board*, 309 U.S. 350; *Trailmobile Co.* v. *Whirls*, 331 U.S. 40.

In any event, the contention is without merit. Petitioner argues that the imposition of vicarious liability

on the local committees interferes with freedom of association. It reasons (Br. 54) that "an individual cannot feel safe in joining an organization no matter how sure he is of its purity; he must now have the same confidence about all other organizations with which [he] may possibly cooperate * * *." But the Act imposes no disabilities on individuals for activities prior to the time the final order to register has been upheld by the courts. If they continue as members after that time, they are on notice concerning the character of the organization to which they belong.

Moreover, even if we assume *arguendo* that a broad reading of "organization" might raise a substantial constitutional issue under the First Amendment, none is raised here. The Board has found the American Committee and the local committees to be part of a single organization on the basis of evidence which shows that they formed an integral whole. As the court of appeals characterized the evidence, the local committees "were intermeshed with the national group, not only in policies but in operation" (R. 77). Moreover, the evidence showed as to every local group concerning which evidence was introduced that it was run by members of the Communist Party (see pp. 11–13 above). Consequently, the Board found that "the effective management, direction, and supervision of the local branches of [petitioner] are substantially and primarily performed by and are under the control of members and representatives of the Communist Party" (R. 35).

Petitioner contends that the Board's interpretation violated procedural due process protected by the Fifth Amendment because it treated the American Committee and the local committees as a single organization in making its findings as to the character of petitioner and because the order to register covers the local committees. As we have emphasized, however, the activities of the American Committee and the local committees were so interrelated that the Board could reasonably consider them together, both in making its findings as to the character of petitioner and in determining the scope of its order to register. Moreover, petitioner's contention that the local committees cannot be required to register since they were not made separate parties to the proceeding, would at most excuse them from registering; it would not excuse petitioner.

5. The disclosure provisions of the Act do not violate the self-incrimination clause of the Fifth Amendment

Petitioner contends (Br. 112–113) that the registration provisions are unconstitutional because they violate the self-incrimination clause of the Fifth Amendment. Petitioner's contention is two-fold: first, that the privilege against self-incrimination of its own officers is violated; second, that the privilege of the officers of the Communist Party was violated by the order to register in the *Communist Party* case; that the Act therefore was invalid as applied to the Communist Party; and that since the Communist-front provisions depend upon the Communist-action provi-

sions, the Act is *ipso facto* invalid as applied to Communist-front organizations like petitioner.

Since this contention was not raised below[53] this Court would consider it only in exceptional circumstances: *E.g., Duignan* v. *United States,* 274 U.S. 195, 200; *Husty* v. *United States,* 282 U.S. 694, 701–702; *Lawn* v. *United States,* 355 U. S. 339, 362–363, note 16; *California* v. *Taylor,* 353 U.S. 553, 557, note 2. There are no exceptional circumstances here. Indeed, petitioner's argument, as we will show, would require overruling of the decision in the *Communist Party* case. It is particularly inappropriate, we submit, to consider overruling a recent determination by this Court where the litigant has not even raised the issue below.

a. This Court's decision in the Communist Party *case is controlling*

In the *Communist Party* case this Court, in upholding the order to register, ruled that the Party's claim that registration would violate its officers' privilege against self-incrimination was premature. 367 U.S. at 105–110. The Court noted that the privilege must be claimed by the particular individuals seeking its protection; that there was no indication that Party leaders would claim it; and that, if the privilege were claimed, it might be honored by the Attorney General. Since the registration provisions relating to Com-

[53] Moreover, in its petition for a writ of certiorari, petitioner's only reference (Pet. 25, note 15) to the self-incrimination clause of the Fifth Amendment is to ask this Court in a footnote to overrule the *Communist Party* case.

munist-front organizations are identical to, and operate in the same way as, the provisions concerning Communist-action organizations, the *Communist Party* case is controlling.

Petitioner suggests that the fact that the Party has not registered shows that this Court erred in the *Communist Party* case. It points to the decision in *Communist Party* v. *United States*, 331 F. 2d 807 (C.A. D.C.), certiorari denied, 377 U.S. 968, where the Party's conviction for failure to register was overturned on the ground that, in refusing to register, the Party's officers had properly invoked their privilege under the Fifth Amendment. However, the issue whether the Party can be convicted for failure to register is still in litigation and its ultimate determination is uncertain. But even if the Party's failure to register ultimately is upheld because of its officers' rights under the Fifth Amendment, that in no way undermines this Court's earlier decision that the issue was then premature. The decision of the court of appeals overturning the Party's criminal conviction demonstrates the importance of determining the validity of a claim of privilege on the basis of the concrete facts in a particular case.

The suggestion that petitioner cannot be ordered to register until the Party registers is plainly erroneous. The statutory requirement that a Communist-front organization register requires only a finding that it is controlled by, and primarily operates to give aid and support to, a Communist-action organization. The Act does not require that the action organization actually register before the front organization can be

ordered to do so. For an organization poses a danger to the national security if it is a subsidiary of a Communist-action organization, *i.e.*, of an organization controlled by the foreign government controlling the world Communist movement and operating primarily to carry out the objectives of that movement. The danger is in no way lessened if the Communist-action organization does not register, disclose its officers and members, and give a financial accounting; if anything, the action organization's refusal to do so increases the danger. And finally, we do not understand how the Party's refusal to register based on the Fifth Amendment can in any way affect petitioner's own rights or those of its officers under this same Amendment.

b. Even if the Communist Party *case is not controlling, the Fifth Amendment has not been violated*

This Court's determination in the *Communist Party* case is firmly based on numerous earlier decisions of this Court which demonstrate that petitioner's claims are premature. Moreover, even if petitioner can raise Fifth Amendment objections at this time, we believe that those contentions are without merit.

(*i*) *The present case is not a proper vehicle for the litigation of the self-incrimination issues.*—Assuming *arguendo* that the officers who will eventually have the duty to effect the registration of petitioner will be personally privileged o refuse, or at least to assert and litigate a claim of privilege, that fact does not render either the registration provisions of the Act or the registration order invalid. At the present time, the self-incrimination issue is entirely hypo-

thetical since no officers have yet been called upon to register.

First, it is settled that the privilege against self-incrimination "is essentially a personal one, applying only to natural individuals." *United States* v. *White*, 322 U.S. 694, 698. It may be invoked neither by a corporation (*Wilson* v. *United States*, 221 U.S. 361; *Essgee Co.* v. *United States*, 262 U.S. 151, 155–156; *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186, 205; *Curcio* v. *United States*, 354 U.S. 118, 122) nor by an unincorporated organization or association, such as petitioner (*United States* v. *White, supra*, 322 U.S. at 699). The order under review is directed against petitioner alone, not against any natural individual, and petitioner alone is before the Court at this time. While it is true that artificial entities such as corporations and unincorporated associations can act only through individuals, the simple fact is that only natural individuals are protected by the privilege and no such individual is a party to this case.

Second, the privilege against self-incrimination is a privilege which must be personally and explicitly claimed. *Quinn* v. *United States*, 349 U.S. 155, 162; *Emspak* v. *United States*, 349 U.S. 190, 194; *Rogers* v. *United States*, 340 U.S. 367, 370; *Smith* v. *United States*, 337 U.S. 137, 150; *United States* v. *Monia*, 317 U.S. 424, 427; *United States* v. *Murdock*, 284 U.S. 141, 148; *Vajtauer* v. *Commissioner of Immigration*, 273 U.S. 103, 113. It is "merely an *option of refusal*, not a prohibition of inquiry" (emphasis added). VIII Wigmore, *Evidence* (3d ed., 1940), § 2268.

There has been no claim of privilege thus far, and there may never be one. Since this Court does not anticipate constitutional issues (*Peters* v. *Hobby*, 349 U.S. 331, 338), petitioner's attempt to litigate the self-incrimination issue in this case, before it is raised, would clearly seem to be premature. Cf. *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U.S. 419, 443. The question of the availability of the privilege to an officer or officers of petitioner will not arise until the order of the Board becomes final and the duty to bring about petitioner's registration comes into being. If at that time a privilege is claimed, it can then be decided.

Third, it cannot be assumed at this time that a claim of privilege will inevitably be made when petitioner is confronted by the statutory requirement that it register. While the Communist Party did claim the privilege against self-incrimination, it is not certain that officials of petitioner will also do so. Although, as the Board found, petitioner is controlled by the Party, different considerations may very well be present. For example, while petitioner operates openly except for concealing its connection with the Communist Party, the latter has frequently been conspiratorial and secret. Moreover, registration as a front organization, unlike as an action organization, does not require disclosure of ordinary members. Since, as shown by the record here (*e.g.*, A.G. Ex. 34; R. 22), petitioner publicly lists its officers, they may not claim the privilege.

Further, even if it be assumed that a claim of privilege will be made by every one of the officials of peti-

tioner having the duty of effecting petitioner's registration, and that such a claim must of necessity be upheld, this would not render either the registration provisions of the Act or the order of the Board invalid. The order to register should still be upheld in this proceeding. "[T]he utmost result would be that the statute and order would be unenforceable" whenever opposed by a valid claim of the privilege. *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531, 550 (C.A. D.C.), affirmed, 367 U.S. 1. The distinction is important for at least two reasons. First, the non-enforceability of the order could be removed by a grant of immunity from prosecution for any offense of which a prospective registerer of petitioner might fear to incriminate himself. See *Brown* v. *Walker*, 161 U.S. 591; *Ullman* v. *United States*, 350 U.S. 422.[54] Second, the non-enforceability of the order to register would not affect the disabilities which come into being when the order to register becomes final; these have a vitality separate and apart from the registration process and do not depend upon actual registration.

(*ii*) *In any event, the officers of petitioner having the duty under the Act and regulations to effect the registration will not be personally privileged to refuse to do so.*—If the Court should reject our argument

[54] It is probable that such a grant of immunity would require a new statute. But the fact that new legislation would probably be required to authorize the granting of immunity in connection with registration proceedings does not affect our argument that, because of the possibility of granting immunity, the order is not constitutionally invalid merely because it might be unenforceable without such a grant.

that it need not and should not now pass upon the issue of whether an officer of the petitioner can validly claim the privilege as a ground for not registering the petitioner, and should undertake to determine that issue in this proceeding, our position would be that the privilege is not available to such officers.[55] In *United States* v. *White*, 322 U.S. 694, the Court held, not merely that an organization or association cannot invoke the privilege against self-incrimination, but that an officer of an organization or association who has custody of its records, if called upon to produce them pursuant to a subpoena, may not lawfully refuse to do so even if they would tend to incriminate him personally. "[T]he papers and effects which the privilege protects," this Court said, "must be the private property of the person claiming the privilege, or at least in his possession in a purely personal capacity. * * * But individuals, when acting as representatives of a collective group, cannot be said to be exercising their personal rights and duties nor be entitled to their purely personal privileges. Rather they assume the rights, duties, and privileges of the artificial entity or association of which they are agents or officers and they are bound by its obligations. In their official capacity, therefore, they have no privi-

[55] We are not quite sure how such a determination can be made without considerable information about all the particular officers who will be responsible, under the Act and regulations (see Appendix A, p. 173 below), for filing petitioner's registration statement. As we discuss below (pp. 159-161), many of petitioner's officers may not properly claim the privilege since *in fact* there is no possibility that the disclosures from their filing the statement would incriminate them.

lege against self-incrimination. And the official records and documents of the organization that are held by them in a representative rather than in a personal capacity cannot be the subject of the personal privilege against self-incrimination, even though production of the papers might tend to incriminate them personally." *Id.* at 699. Accord, *Wilson* v. *United States,* 221 U.S. 361, 376–385; *Wheeler* v. *United States,* 226 U.S. 478, 489–490; *Essgee Co.* v. *United States,* 262 U.S. 151, 158; *Curcio* v. *United States,* 354 U.S. 118, 122–123; *McPhaul* v. *United States,* 364 U.S. 372, 380.

The rationale of the *White* case is equally applicable, we submit, to the case at bar. Cf. Meltzer, *Required Records, The McCarran Act, and the Privilege Against Self-Incrimination,* 18 U. of Chi. L. Rev. 687, 720. This Court has, in fact, specifically cited the *White* case as authority for the proposition that one of the Communist Party's own officers on the local level—the Treasurer of the Communist Party of Denver—"had no privilege with respect to the books of the Party, whether it be a corporation or an unincorporated association." *Rogers* v. *United States,* 340 U.S. 367, 371–372. But see *Communist Party* v. *United States,* 331 F. 2d 807 (C.A. D.C.), certiorari denied, 377 U.S. 968.

The rationale of *White* is not inapplicable on the ground that in *White* physical records were in question, while the issue here is the compulsory submission of a registration statement containing the names and addresses of officers and a financial accounting.

It is immaterial whether the officer is required to produce organization records or to file an organization report; the critical consideration is that the officer cannot refuse to submit documents on behalf of his organization because of his claim that they will incriminate him individually. This is made clear by *Baltimore & Ohio R.R.* v. *Interstate Commerce Commission,* 221 U.S. 612, where this Court applied the principle enunciated in *Wilson* v. *United States, supra,* to hold that an officer of a railroad could not rely upon his personal privilege against self-incrimination to justify his failure to submit to the Commission carrier reports required by the Interstate Commerce Act. The Court stated: "[W]ith regard to the keeping of suitable records of corporate administration, and the making of reports of corporate action, where these are ordered by the Commission under the authority of Congress, the officers of the corporation, by virtue of the assumption of their duties as such, are bound by the corporate obligation and cannot claim a personal privilege in hostility to the requirement." 221 U.S. at 623.

Second, here, unlike in *Baltimore & Ohio R.R.,* petitioner is not required to disclose entirely new material by means of a report. Most or all of the data required in the registration statement could be provided by "reproductions of or extracts from organization records." *Communist Party* v. *Subversive Activities Control Board,* 223 F. 2d 531, 547 (C.A. D.C.), affirmed, 367 U.S. 1. If the officer of petitioner having custody of its records showing the

names and addresses of its officers and the sources and modes of expenditure of its funds may be required to submit those records pursuant to a subpoena *duces tecum,* notwithstanding his claim that they tend to incriminate him personally, it would be an exaltation of form over substance to hold that he may not be required to transpose such data to a registration form to be filed as required by the Act. Whether the records reflecting the required data "are kept formally or informally is immaterial" since "[n]o additional explanatory testimony is required by this statute." *Communist Party* v. *Subversive Activites Control Board,* 223 F. 2d 531, 547 (C.A. D.C.), affirmed, 367 U.S. 1.

It is of course possible that not all the data required on a registration statement can be found in petitioner's records and that consequently the officers might have to rely on their personal knowledge in order to complete the statement. But this Court has specifically rejected the argument that, because some of the information called for in a statement required to be filed may be privileged, no statement at all need be filed. *United States* v. *Sullivan,* 274 U.S. 259. There, the Court held that the fact that some of the answers called for on an income tax return form may be incriminating does not excuse a failure to file any return at all, the proper course being to file a return and claim the privilege, where the facts warrant, with respect to specific questions. Similarly with respect to a registration statement, even if it be assumed that the registering officer has a privilege

with respect to called-for data not found in the organization's records, he would be required to file as complete a statement as possible based on the records, and claim his privilege with respect to the rest.[56] Cf. *Rabinowitz* v. *Kennedy,* 376 U.S. 605, 610–611.

Even if an officer of an organization could invoke the privilege against self-incrimination as to the organization's records, it is unlikely that all of petitioner's officers could do so. In evaluating a claim of privilege which an officer of petitioner might hereafter advance, one of the fundamental principles is that the privilege in question is a privilege against *self*-incrimination. The claimant may not, under the guise of protecting himself against self-incrimination, seek to shield others. *Rogers* v. *United States, supra,* 340 U.S. at 371; *United States* v. *Murdock,* 284 U.S. 141, 148; *Hale* v. *Henkel,* 201 U.S. 43, 69; *Brown* v. *Walker,* 161 U.S. 591, 609. In *Rogers,* in determining that a witness had waived his privilege, the Court stated that "[s]ince the privilege against self-incrimination presupposes a real danger of legal detriment arising from the disclosure, petitioner cannot invoke the privilege where response to the specific question in issue here would not further incriminate her." *Id.* at 372–373. The protection afforded by the privilege "must be confined to instances where the witness has reasonable cause to apprehend danger

[56] For example, if the filing official were known by more than one name and he feared that the listing of his aliases would tend to be self-incriminatory for some reason, he could claim the privilege with respect to his own aliases, though he could *not* do so with respect to the aliases of others.

from a direct answer. *Mason* v. *United States,* 244 U.S. 362, 365 (1917), and cases cited. The witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself—his say-so does not of itself establish the hazard of incrimination." *Hoffman* v. *United States,* 341 U.S. 479, 486.

If an officer of petitioner signed a registration statement, he would identify himself as an officer of an organization controlled by the Communist Party. Assuming such an admission might be incriminating, Section 4(f) of the Act provides that the fact of registration cannot be introduced in any criminal prosecution. Admittedly, this is a limited and not an absolute grant of immunity against prosecution. Cf. *Counselman* v. *Hitchcock,* 142 U.S. 547, with *Brown* v. *Walker,* 161 U.S. 591, and *Ullman* v. *United States,* 350 U.S. 422. Nevertheless, it means that the only way the government could possibly use information obtained under the Act would be as leads to obtain other evidence which Section 4(f) apparently does not forbid introducing. But it is incredible to suppose that there is not at least one officer of petitioner—which except for its connection with the Communist Party operates openly—who is known to the government. Indeed, the record shows that the officers of petitioner are publicly disclosed by numerous documents issued by petitioner itself (*e.g.,* A.G. Ex. 34; R. 22). Even without such record evidence, these are matters of public knowledge of which the courts can take notice. See *Jacobson* v. *Massachusetts,* 197 U.S.

11, 30; *Gay's Gold,* 13 Wall. 358, 362; *New York Indians* v. *United States,* 170 U.S. 1, 32; *United States* v. *A. H. Fischer Lumber Co.,* 162 F. 2d 872, 873 (C.A. 4). Thus, some—and surely at least one—officers of petitioner could sign a registration statement without providing the government with any new information and therefore without possibly incriminating himself.

The argument that requiring an officer of petitioner to perform an act which by implication establishes his membership in petitioner amounts to compulsory self-incrimination, when he has never sought to conceal and indeed has many times conceded his membership, is too mechanical an application of the constitutional guaranty. To force an admission of membership from an obscure or concealed member of petitioner is one thing. See *Patricia Blau* v. *United States,* 340 U.S. 159. But to require petitioner's executive secretary to effectuate petitioner's registration under the Act and thus, incidentally, to admit that he is a member and officer of petitioner is another. In the one case there is "a real danger of legal detriment arising from the disclosure" (*Rogers* v. *United States, supra,* 340 U.S. at 373); in the other, there is nothing of the sort.

Even if the officers of the Party did have a constitutional right to refuse to sign the registration statement, an organization which is under a legal obligation to perform an affirmative act also has the obligation to secure someone else to act on its behalf in performing its duty. *United States* v. *3963 Bottles,*

265 F. 2d 332 (C.A. 7); *United States* v. *42 Jars*, 162 F. Supp. 944 (D. N.J.), affirmed, 264 F. 2d 666 (C.A. 3); *Simon* v. *American Tobacco Corp.*, 192 Fed. 662 (S.D. N.Y.). The court of appeals in the case involving the criminal conviction of the Communist Party for failure to register recognized that, if a "willing volunteer" was available to register the Party, the latter was required to register; it held, however, that the government had the burden of proving that such a volunteer existed. *Communist Party* v. *United States*, 331 F. 2d 807, 814–815 (C.A. D.C.), certiorari denied, 377 U.S. 968.

It is extremely likely that petitioner would have volunteers available to register for it. An attorney or other agent could register for the petitioner without having an intimate knowledge of its affairs or indeed any direct knowledge. He could make the statement that petitioner is a Communist-front organization on the basis of the Board's determination in ~~the *Communist Party*~~ this case, and could list the names of officers which petitioner gave him. Moreover, even if such actions did require intimate knowledge of petitioner, they would in no way be incriminating, since attorneys and other agents frequently obtain detailed information concerning a client without having anything other than a professional connection.

It is not our purpose to explore all the ramifications of the question of the possible privilege of petitioner and its officials to refuse to effect petitioner's registration on the basis of the Fifth Amendment. On the contrary, our position is that this question is not

in this case at this time and has been prematurely raised by petitioner. Our purpose has been therefore to refute petitioner's contention that (1) the claim is certain to be made eventually, and that (2) when made it must certainly be upheld, so that (3) it should in the interest of economy be settled in this case (4) in favor of upholding the claim.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below should be affirmed.

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755-587—64——12

APPENDIX A

Analysis of the Subversive Activities Control Act

The Subversive Activities Control Act is Title I of the Internal Security Act of 1950, 64 Stat. 987, 50 U.S.C. 781–798. It has been amended, insofar as it relates to Communist-action or -front organizations, four times—in a relatively minor detail (see p. 169, note 2, below) by the Act of July 29, 1954, 68 Stat. 586; again, in a more substantial manner, by the Communist Control Act of August 24, 1954, Sections 6–11, 68 Stat. 775, 777–780; and finally in minor details by the Acts of August 20, 1958, and May 31, 1962, 72 Stat. 950, 76 Stat. 91. In view of the length of the Act and the complex interlocking of its numerous sections and subsections, a summarization of its principal provisions may be helpful. Rather than a mere section-by-section summary, the effort will be to present an over-all view showing the structure of the Act, with emphasis on the essentials of the registration scheme and the nature of the legal consequences which attach to an organization's act of registering (or being ordered to register) both as they affect the organization itself, considered as an entity, and as they affect individual members of the organization and others.

1. The Congressional findings as to the necessity for the legislation

Section 2 sets forth in fifteen numbered paragraphs certain findings—based on "evidence adduced before various committees of the Senate and House of Repre-

sentatives"—which convinced Congress of the necessity for the legislation. Congress found, for example, that "[t]here exists a world Communist movement" consisting of a "world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization" (Section 2(1)). The "direction and control" of this movement was found to be "vested in and exercised by the Communist dictatorship of a foreign country," not named in the Act (Section 2(4)). This foreign Communist dictatorship, it was further found, establishes "action organizations" in various countries, these organizations being part of a world-wide Communist organization and controlled by the foreign dictatorship (Section 2(5)). These "Communist-action organizations" seek to bring about "the overthrow of existing governments by any available means, including force if necessary" and to set up in their stead local Communist dictatorships subservient to the parent dictatorship (Section 2(6)). These Communist organizations "are organized on a secret, conspiratorial basis" and operate to a substantial extent through organizations known as "Communist fronts," which are maintained and used so as to conceal "their true character and purposes and their membership. One result of this method of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purposes of, and the actual nature of the control and influence exerted upon, such 'Com-

munist fronts'" (Section 2(7)). Finally, Congress found (Section 2(15)):

> The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a moment when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow of the Government of the United States by force and violence may seem possible of achievement, it seeks converts far and wide by an extensive system of schooling and indoctrination. Such preparations by Communist organizations in other countries have aided in supplanting existing governments. The Communist organization in the United States, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

2. "Communist-action" and "Communist-front" organizations

"Communist-action organization."—The Act defines a "Communist-action organization" as "any organization in the United States," other than one diplomatically accredited, which "is substantially directed,

dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2" *and* which "operates primarily to advance the objectives" of that movement "as referred to in section 2" (Section 3(3)).

"Communist-front organization."—A "Communist-front organization" is defined as "any organization in the United States" which is "substantially directed, dominated, or controlled by a Communist-action organization" *and* "is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement" (Section 3(4)).

3. The registration scheme

The heart of the Act—the organizational registration requirement—is contained in Section 7.

The duty of Communist-action and Communist-front organizations to register with the Attorney General.—Each Communist-action organization (Section 7(a)) and each Communist-front organization (Section 7(b)) is required to "register with the Attorney General, on a form prescribed by him by regulations" as the one or the other type of organization. Registration is to be effected within thirty days after enactment of the Act (Secion 7(c)(1)), or, in the case of an organization which becomes registerable after the Act's passage, within thirty days after becoming registerable (Section 7(c)(2)). In the case of an organization which does not voluntarily register and which is subsequently ordered to register by the Subversive Activities Control Board, registration must

be effected within thirty days after the Board's order becomes final[1] (Section 7(c)(3)).

The registration statement.—The registration process includes the submission of a registration statement, to be prepared in accordance with regulations, containing certain specified information (Section 7(d)). The information is to include (1) the name and address of the organization (2) the name, address, title, and duties of each officer of the organization, including each person who has been an officer at any time during the preceding year, (3) an accounting of all funds received and spent by the organization during the preceding year, including the sources of the funds and the purposes of the expenditures, (4) (applicable to Communist-action organizations only) the name and address of each member of the organization, including each person who has been a member at any time during the preceding year, (5) any aliases that may ever have been used by any officer or member required to be listed, and (6)[2] a list of all printing presses and other mechanical devices used in printing in the possession or control of the organization, its officers, or members.

Annual reports.—Annual reports are required to be submitted to keep the initial registration statement up to date (Section 7(e)).

Records required to be kept.—Accurate financial records are required to be kept by all registered organizations (Section 7(f)(1)). In addition, action or-

[1] The process leading to an order by the Board to register is provided for in Section 13, (see pp. 171–173 below). The conditions under which a Board order becomes final are set forth in Section 14(b) (see p. 176 below).

[2] Added by the Act of July 29, 1954, 68 Stat. 586.

ganizations are required to keep accurate membership lists (Section 7(f)(2)).

Remedies open to persons claiming to be wrongly listed.—Section 7(g) provides remedies for persons who are listed by reporting organizations as being officers or members and who deny that they are such. The Attorney General is required to notify all individuals whom reporting organizations list as officers or members that they have been so listed. Any listed individual who denies that he is an officer or member may request the Attorney General to strike his name from the statement. In that event, the Attorney General is required to investigate the matter, and if he is satisfied that the denial is correct, he is to strike the individual's name. If he is not satisfied that the denial is correct and declines to strike the name, or if he fails to strike it within five months after receiving the request, the individual may petition the Board pursuant to Section 13(b) for an order requiring the Attorney General to strike his name.

Publication to constitute notice.—Upon the registration of an organization, the Attorney General is required to publish in the Federal Register the fact that the organization has registered as a Communist-action or Communist-front organization as the case may be (Section 9(d)). Such publication, it is provided "shall constitute notice to all members of such organization that such organization has so registered" (*ibid.*).

Keeping of registers.—The Attorney General is required to keep registers of all organizations which register, consisting of the names and addresses of the organizations and their registration statements and annual reports (Section 9(a)). The registers are to be open to public inspection, except that the name of any person listed by an organization as being an of-

ficer or member who denies his status as such may not be made public pending determination by the Attorney General of the correctness of the listing (Section 9(b)).

4. Proceedings before the Board leading to orders requiring organizations to register

Section 13 of the Act provides for quasi-judicial proceedings before the Subversive Activities Control Board leading to orders requiring, or refusing to require, organizations claimed by the Attorney General to be action or front groups to register with him as such. The Board itself is established and its general powers and functions defined in Section 12.

The petition by the Attorney General.—Whenever the Attorney General has reason to believe that any organization which has not registered under Section 7(a) as an action organization or under Section 7(b) as a front organization "is in fact an organization of a kind required to be registered under such subsection," he is required to file with the Board and serve upon the organization a petition for an order requiring the organization to register (Section 13(a)).

Hearings before the Board.—Upon the filing of such a petition, the Board (or any member or a designated examiner) holds a hearing to inquire into the facts regarding the organization's registerability (Section 13(c)). The administration of oaths and the issuance of subpoenas are provided for (*ibid.*). Hearings are public, and each party is entitled to present its case with the assistance of counsel, to offer oral or documentary evidence, and to cross-examine opposing witnesses (Section 13(d)).

Types of evidence required to be considered.—Section 13(e) sets forth in eight numbered paragraphs certain types of evidence which the Board is required

to consider in determining whether an organization is a Communist-action organization under Section 3(3). For example, the Board is to take into consideration:

> (1) the extent to which its [the organization's] policies are ~~promulgated~~ formulated and carried out and its activities performed, pursuant to directives or to effectuate the policies of the foreign government or foreign organization in which is vested, or under the domination or control of which is exercised, the direction and control of the world Communist movement referred to in section 2 * * *.

Similarly, Section 13(f) sets forth four evidentiary factors required to be taken into consideration in determining whether an organization is a front group under Section 3(4). These factors are the extent to which (1) the persons who are active in managing the organization are active in managing any Communist-action organization; (2) the organization's financial or other support came from any Communist-action organization; (3) its financial resources and personnel are used to promote the objectives of any Communist-action organization; and (4) the positions taken by it do not deviate from those of any Communist-action organization.

Reports and orders.—If the Board determines that the organization is a Communist-action or Communist-front organization, it must make a report stating its finding of fact and issue an order requiring the organization to register (Section 13(g)(1)). If it determines that the organization is not such a group, it so reports and issues an order denying the Attorney General's petition (Section 13(h)(1)).

Publication to constitute notice.—When an order of the Board requiring registration of a Communist-

action organization becomes final (see p. 176), that fact must be published in the Federal Register and such publication is declared to "constitute notice to all members of such organization that such order has become final" (Section 13(k)).

5. The duty of individuals to register under certain circumstances

The Act also imposes upon individuals a duty to register under certain circumstances.

(a) Officers required to effect an organization's registration

If a Communist-action or Communist-front organization should fail to register or to file a registration statement or annual report as required by Section 7, it is the duty of the executive officer and of the secretary of the organization (or the individuals performing the usual duties of such officers), and of such other officers as the Attorney General may by regulations prescribe, to register for the organization or to file the registration statement or annual report, as the case may be (Section 7(h)). Pursuant to this authority, the Attorney General has designated the following additional officers as sharing with those named in the Act the responsibility of effecting the registration of an organization which is required to register but fails to do so: (a) the president, chairman, or other person who is chief officer; (b) the vice-president, vice-chairman, or person performing the functions of either; (c) the treasurer; and (d) members of the governing board, council, or body. 28 C.F.R. 11.205.

(b) *Personal registration of members of Communist-action organizations*

Conditions under which required.—The Act specifies two conditions under which members of a Communist-action organization are required to register personally with the Attorney General. First, if there is in effect a final order of the Board requiring the action organization to register and more than thirty days elapse without compliance, it becomes the duty of each member of the organization to register personally (Section 8(a)). Secondly, if a Communist-action organization registers but fails to include the names of all its members on the membership list it files, each member not on the list who knows the organization to be registered and to have omitted his name must himself register within sixty days after obtaining such knowledge (Section 8(b)). In either case, the individual is required to file a registration statement containing such information as the Attorney General may by regulations prescribe (Section 8(c)).

Proceedings before the Board.—If an individual who the Attorney General believes is required to register under Section 8, does not in fact register, the Attorney General may petition the Board (as in the case of an organization) for an order requiring the individual to register (Section 13(a)).

Hearings.—The Attorney General's petition for an order to require an individual to register is heard by the Board in the same manner as a petition for an order requiring an organization to register (see p. 171 above) (Section 13(c) and (d)).

Reports and orders.—In each instance the Board must make a report stating its findings and issue an order either requiring the individual to register

(Section 13(g)(2)) or denying the Attorney General's petition (Section 13(h)(2)).

6. Fact of registration not admissible in any criminal prosecution and membership not to constitute per se a violation of any criminal statute

The fact of the registration of any person as an officer or member of any Communist-action or Communist-front organization may not be received in evidence against such person in any prosecution for any alleged violation of any criminal statute (Section 4(f)). In addition, neither the holding of office nor membership in any Communist organization by any person shall constitute *per se* a violation of any criminal statute (*ibid.*).

7. Cancellation of registration

The Act establishes procedures whereby an individual or an organization which has once registered—whether with or without an order of the Board commanding him or it to do so—may procure the cancellation of his or its registration in the event of a change in the circumstances which originally required registration.

Application to the Attorney General.—Any organization registered under Section 7 as an action or front group, and any individual registered under Section 8, may, not oftener than once in each calendar year, make application to the Attorney General for the cancellation of such registration (Section 13(b)).

Petition to the Board.—If the Attorney General denies the application, the organization or individual concerned may, within sixty days after such denial, file with the Board and serve upon the Attorney Gen-

eral a petition for an order requiring the cancellation of registration (Section 13(b)).

Hearings.—The petition is heard by the Board in the same manner as a petition by the Attorney General requesting that an organization or individual be directed to register (Section 13 (c) and (d)).

Reports and orders.—In each case the Board must make a report stating its findings and issue an order granting (Section 13(i)) or denying (Section 13(j)) the petition.

8. Judicial review and finality of Board orders

The Act provides that any party aggrieved by any order of the Board be given full opportunity for judicial review either in the United States Court of Appeals for the District of Columbia Circuit or in the circuit of the petitioning party's residence, with the possibility of further discretionary review by this Court on writ of certiorari (Section 14(a)). On such review the Board's findings of fact, if supported by the preponderance of the evidence, are conclusive (*ibid.*).

Exhaustion of judicial review a prerequisite to an order of the Board becoming final.—An order of the Board does not become final, *i.e.*, enforceable, until full opportunity for judicial review has been exhausted or until review is foreclosed by failure to make timely application therefor (Section 14(b)).

9. The legal consequences of an organization's registration or of a final order to register

When an organization registers under Section 7, or when an order of the Board under Section 13 requiring an organization to register becomes final under

Section 14(b), the Act provides for the immediate occurrence of certain legal consequences—one affecting the organization as such, the others affecting members of the organization. In addition, upon the registration of an organization or when an order directing it to register becomes final, certain limitations are imposed upon the conduct of officers and employees of the United States and of "defense facilities," as defined in the Act with respect to their relations with the organization and its members. These various legal consequences may be summarized and classified as follows:

(*a*) *Consequence to the organization as such*

The *"labeling" requirements.*—When an organization is registered or has been finally ordered to register, any publication of the organization transmitted by mail or in interstate or foreign commerce and intended to be circulated among two or more persons must bear on its face and on any wrapper in which it is contained the printed statement "Disseminated by [name of organization], a Communist organization" (Section 10(1)). Similarly, radio and television broadcasts sponsored by the group must be identified as being "sponsored by [name of organization], a Communist organization" (Section 10(2)). Violation of these provisions by the organization or by any person acting on its behalf is made a punishable offense (Sections 10, 15(c)).

(*b*) *Consequences to members of, and contributors to, the organization*

Denial of tax benefits.—Persons making contributions to any organization which is registered or has been finally ordered to register may not deduct the

amount of their contributions from their gross taxable income notwithstanding any other provisions of law (Section 11(a)), and no such organization may claim any tax-exemption privilege specified in Section 101 of the Internal Revenue Code (Section 11(b)).

Employment restrictions.—Section 5(a)(1) provides that members of an organization having knowledge or notice that the organization is registered or has been finally ordered to register are prohibited from (A) concealing or failing to disclose their membership in seeking, accepting, or holding any nonelective federal employment, (B) holding such employment, (C) concealing or failing to disclose their membership in seeking, accepting, or holding employment in any defense facility,[3] (D) working in any defense facility (this clause is applicable only to members of action organizations), or (E)[4] holding office in or being employed by any "labor organization" as defined in the National Labor Relations Act[5] or representing any employer in proceedings under that Act.

Provisions applicable to aliens.—Alien members of or aliens affiliated with organizations which are registered or have been finally ordered to register are excluded from admission into the United States, are

[3] A "defense facility" is defined in Section 3(7), as amended by the Act of May 31, 1962, 76 Stat. 91, as any plant, factory, airport, vessel, pier, etc. "designated by the Secretary of Defense pursuant to section 5(b)."

[4] Added by the Communist Control Act of 1954, Section 6, 68 Stat. 777.

[5] *I.e.*, "any organization * * * in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." 29 U.S.C. 152(5).

deportable, and are ineligible for naturalization.[6] The joining of or affiliating with an organization so registered or required to register, within five years after naturalization, if naturalization occurs after the effective date of the Immigation and Nationality Act of 1952, is declared to constitute *prima facie* evidence, warranting revocation of citizenship in a denaturalization proceeding if not rebutted, of lack of attachment to the principles of the Constitution and of the quality of being well disposed to the good order and happiness of the United States at the time of naturalization.[7]

(*c*) *Consequences to government and defense-facility employees in their relations with the organization and its members*

Contributions to registered organizations forbidden.—When an organization is registered or has been finally ordered to register, officers and employees of the United States and of defense facilities,[8] having

[6] These provisions ere originally contained in Sections 22 and 25 of the Subversive Activities Control Act, which amended the immigration and naturalization laws. They are now contained in the Immigration and Nationality Act of June 27, 1952, 66 Stat. 163, Section 212(a)(28)(E) (exclusion), 241(a)(6)(E) (deportation), and 313(a)(2) (G) and (H) (ineligibility for naturalization). If the alien can establish that he did not know the organization in question to be a Communist organization when he joined it and did not acquire such knowledge prior to the time it registered or was required to register, the provisions are by their terms inapplicable, except that members of action organizations are declared ineligible for naturalization without such qualifying language.

[7] As amended and carried forward in Section 340(c) of the Immigration and Nationality Act of June 27, 1952, 66 Stat. 163, 261.

[8] See p. 178, note 3 above for the definition of "defense facility."

knowledge or notice of that fact, are prohibited from contributing funds or services to such group (Section 5(a)(2)(A)).

Counseling violation of employment provisions.—Section 5(a)(2)(B) makes it a punishable offense for an officer or employee of the United States or of any defense facility, with knowledge or notice that an organization is registered or has been finally ordered to register, to advise or counsel any person whom he knows to be a member of such organization to perform or omit the performance of any act the performance or omission of which would constitute a violation of the employment provisions of Section 5(a)(1) (see pp. 178 above).[9]

10. Criminal penalties

Organizations.—Any organization which has been directed by a final order of the Board to register and which fails to do so within the time allowed, or which fails to file a required registration statement or annual report or to keep records as required, is punishable for each such offense by a fine of not more than $10,000 (Section 15(a)(1)). Each day of failure to register is a separate offense (Section 15(a)). Each violation of the labeling provisions

[9] In addition, the Act provided that members of an organization having knowledge or notice that the organization is registered or has been finally ordered to register were prohibited from applying for, seeking to renew, using, or attempting to use any passport issued under the authority of the United States (Section 6(a)) and federal employees were prohibited from using or renewing passports to any individual they knew or had reason to believe were members of such organizations (Section 6(b)). This provision was held unconstitutional in *Aptheker* v. *Secretary of State*, 378 U.S. 500.

of Section 10 (see p. 177 above) is similarly punishable (Section 15(c)).

Individuals.—Each individual officer having a duty under Section 7(h) to register or to file a registration statement or annual report on behalf of an organization which has been finally ordered to register (see p. 173 above) is punishable for each failure to fulfill such duty by a fine of not more than $10,000, or imprisonment for not more than five years, or both (Section 15(a)(2)). Each individual having a duty to register personally under Section 8 (see p. 174 above) is similarly punishable, provided there is in effect with respect to him a final order of the Board requiring him to do so (Section 15(a)(2)). In either case, each day of failure to register is a separate offense (Section 15(a)). The willful making of a false statement or the willful omission of a fact required to be stated is similarly punishable (Section 15(b)). Each false statement or willful omission constitutes a separate offense (Section 15(b)(1)), and each listing of the name or address of any one individual is to be deemed a separate statement (Section 15(b)(2)).

Any individual who violates any of the employment provisions or the contributions prohibition of Section 5 (see pp. 178, 179–180 above), or the labeling provisions of Section 10 (see p. 177 above) is punishable for each such offense by a fine of not more than $10,000, or imprisonment for not more than five years, or both (Section 15(c)).

Act not to affect previously existing criminal statutes.—The Act provides that its provisions are to be construed as being "in addition to and not in modification of existing criminal statutes" (Section 17).

11. Communist-infiltrated organizations

The Act as originally passed defined and dealt with but two types of "Communist organization" (Section 3(5))—the Communist-action organization (Section 3(3)) and the Communist-front organization (Section 3(4)). The Communist Control Act of 1954, Sections 7–11, 68 Stat. 775, 777–780, amended the Act so as to define a third category of Communist organization, *viz.*, the "Communist-infiltrated organization," and to enact various restrictive measures with respect to such groups.

Communist-infiltrated organizations are not subject to the registration requirements of the Act. They are, however, subject to Board orders "determining" them to be Communist-infiltrated, which orders, when they become final, entail for such groups some of the same legal consequences which attach to action and front groups when registered or directed to register by a final Board order. "Infiltrated" organizations are defined in Section 3(4A). Proceedings leading to a Board order determining an organization to be Communist-infiltrated are provided for in Section 13A. Such orders are reviewable in the same manner as other orders of the Board (Section 13). The legal consequences which flow from a final Board order determining a group to be infiltrated are set forth in Sections 10, 11, 13A(h), and 13A(j).

12. Separability clause

The Act contains the customary separability clause providing that, if any of its provisions or the application thereof to any person or circumstances is held invalid, the remaining provisions, or the application to other persons or circumstances of any provisions held invalid as to some, shall not be affected thereby (Section 32).

APPENDIX B

THE COMMUNIST FRONT IN THEORY AND PRACTICE

A. Origins and development of the Communist-front theory

Lenin and particularly Trotsky had expected that, after the Communists seized power in one country, revolutions would quickly follow in other countries. In fact, however, this did not occur following the Soviet Revolution. While Communist parties existed throughout Europe, they were not strong enough to seize power. Consequently, the leaders of the Communist movement decided to use more subtle means than direct attempts to overthrow governments by force. See Selznick, *The Organizational Weapon: A Study of Bolshevik Strategy and Tactics* [hereinafter Selznick] 128–129. They foresaw that great strength could be added to their own efforts by enlisting the support of other mass organizations under cover of supposedly common goals and grievances. Not only were existing organizations infiltrated and redirected toward Communist goals, but entirely new organizations were established especially for the purpose of carrying out Communist programs behind a non-Communist facade. The Communists themselves referred to these mass organizations as "fronts" behind which their true Communist objectives could be carried out. As R. N. Carew Hunt described the origins of this approach (*The Theory and Practice of Communism* [hereinafter Hunt] 171):

> The policy of creating organizations which are "fronts" in the sense that their real purposes

> are masked behind a non-political facade of social ideals generally acceptable to progressive public opinion goes back to the early years of the Comintern [Communist International]. At the third Comintern Congress of 1921 it was recognized that Communism would make no rapid progress if it was to be fostered only by such organizations as were avowedly Communist, and that they must therefore be reinforced by others which would attract sympathizers and so provide a screen under cover of which the Communists could advance their policies.

The new plan of using fronts required a change in position. Plainly, a front could not, if it intended to conceal its Communist relationship, advocate revolution. Indeed, one of the reasons for the fronts was that the masses were not prepared to accept Communism in its natural state. It was necessary therefore to wrap Communist dogma in a different, more acceptable container. As Theodore Draper describes the situation (*The Roots of American Communism* [hereinafter Draper] 201):

> The historic left had no problem of concealment or subterfuge. It sought to make the revolution by direct, open, unequivocal revolutionary propaganda. For the Communists, this approach had lost its charm. Instead of gearing the masses to them, they were going to gear themselves to the masses. They would give the masses only as much as they thought the masses capable of swallowing. Now some things could not be divulged. The Communists had to dole out the truth in stages or installments, especially if it involved a dangerous subject like force and violence.

The use of fronts was opposed by some members of the younger Communist parties. They interpreted Communist doctrine as requiring total hostility and

intransigence in dealing with democratic or non-Communist societies. But Lenin, seeing the futility of consistent militance, demanded that they "abandon their sectarianism," establish contact with the masses, and seize power by working in and through governments, trade unions, and any other available institutions. Hunt, p. 171. He praised the revolutionary spirit of the younger Communists, but asserted that it was "abstract Communism" which had not matured to the stage of "practical mass political action." Quoted in Hunt, p. 171.

Lenin's leading colleagues, Trotsky and Stalin, elaborated the Communist theories concerning the uses of fronts. In statements made within the Executive Committee of the Communist International in 1922, Trotsky outlined the circumstances under which the "United Front" tactic could be effectively utilized. He recognized first the two extremes where work within and infiltration of other organizations would be both ineffective and unnecessary (Trotsky, "The Tactics of the United Front," *Fourth International,* March 1941, p. 83):

> In cases where the Communist Party still remains an organization of numerically insignificant minorities, the question of its conduct on the mass-struggle front does not assume a decisive practical-organizational significance. In such conditions, mass actions remain under the leadership of old organizations which by virtue of their still powerful traditions continue to play the decisive role.
>
> * * * * *
>
> Similarly the problem of the United Front does not arise in countries where * * * the Communist Party is the sole leading organization of the toiling masses.

He then described the situation where Communists must consider "front" activities (*id.* at 84):

> But wherever the Communist Party already constitutes a big, political organized force, but not the decisive magnitude * * * it is confronted with the question of the United Front in all its acuteness.

Trotsky concluded his remarks by encouraging Communist parties throughout the world to unite with, and absorb, any other political parties or organizations having parallel programs which cou'd finally be diverted to Communist ends. The ultimate goal was not to strengthen these cooperating organizations, but rather to weaken and ultimately dominate them. Thus, while demanding complete cooperation from other groups, Trotsky said that Communists must maintain their own autonomy (*id.* at 85):

> [A]ny sort of organizational agreement which restricts our freedom of criticism and agitation is absolutely inacceptable to us. We participate in a united front but do not for a single moment become dissolved in it. We function in the united front as an independent detachment. It is precisely in the course of struggle that broad masses must learn from experience that we fight better than the others, that we see more clearly than the others, that we are more audacious and resolute. In this way, we shall bring closer the hour of the United Revolutionary Front under the undisputed Communist leadership.

Although Trotsky's insistence on the immediate spread of Communism by force to other countries (the doctrine of continual revolution) was not adopted by Lenin, his theories on the "United Front" became the official policy and were carried on by Stalin. Stalin described the operational relationship which must

exist between the official Communist Party and organizations which it seeks to use (Stalin, *Problems of Leninism* (International Publishers) 86):

> The Party is the organized detachment of the working class. But the Party is not the only organization of the working class. The Proletariat has also a number of other organizations without which it cannot properly wage the struggle against capital: trade unions, cooperative societies, factory and works organizations, parliamentary groups, nonparty women's associations, the press, cultural and educational organizations, youth leagues.
>
> * * * The overwhelming majority of these organizations are non-party * * * or represent its offshoots. All these organizations, under certain conditions, are absolutely necessary for the working class, for without them it would be impossible to consolidate the class positions of the proletariat in the diverse spheres of struggle; for without them it would be impossible to steel the proletariat as the force whose mission it is to replace the bourgeois order by the Socialist order. But how can single leadership be exercised with such an abundance of organizations? * * * The question then arises: Who is to determine the line, the general direction, along which the work of all these organizations is to be conducted? Where is that central organization which is not only able * * * but, in addition, is in a position * * * to induce all these organizations to carry out this line, so as to attain unity of leadership and to preclude the possibility of working at cross purposes?

Stalin then proceeded to answer his own rhetorical questions: "This organization is the Party of the proletariat." *Ibid.* He explained that (*ibid.*):

> The Party possesses all the necessary qualifications for this * * * [and] is, by reason of

> its experience and prestige, the only organization capable of centralizing the leadership of the struggle of the proletariat, thus transforming each and every non-party organization of the working class into an auxiliary body and transmission belt linking the Party with the class. The Party is the highest form of class organization of the proletariat.

Since the techniques and ultimate goals of the Party would rarely be accepted by non-Party organizations, Stalin recognized the necessity of filtering Communist dogma through mediating channels. *Ibid.* He emphasized, however, that organizations used for this purpose must be kept under strict Party control and discipline (*id.* at 87):

> [T]he opportunist theory of the 'independence' and 'neutrality' of the non-party organizations * * * is wholly incompatible with the theory and practice of Leninism.

The concept of the Front as a "transmission belt," which Stalin utilized, originated with Lenin (XXVI *Collected Works* (International Publishers) 64–65):

> [T]he dictatorship of the proletariat cannot be effected by organizations that embrace the whole of the proletariat. It is impossible to effect the dictatorship without having a number of "transmission belts" from the vanguard to the masses of the advanced class, and from the latter to the masses of the toilers * * *.

The role of front organizations, then, is to communicate the Communist dogma—usually in somewhat more palatable form—to those unwilling to accept it straight from the "vanguard." Stalin expanded upon Lenin's idea (*Problems of Leninism* (International Publishers) 29):

> The levers or the belts are those very mass organizations of the proletariat without whose aid the dictatorship cannot be realized.

He stressed that organizations which were not Communist themselves, but were used by Communists to promote their programs, must always be carefully controlled by the "advanced detachment" or "vanguard" (*id.* at 29):

> The directing force is the advanced detachment of the proletariat, its vanguard, which constitutes the main guiding force of the dictatorship of the proletariat.
>
> * * * * *
>
> The proletariat need these belts, these levers and this directing force, because without them it would be, in its struggle for victory, like a weaponless army in the face of organized and armed capital.

Secondary Communist leaders spelled out the ideas of Lenin, Trotsky, and Stalin. Alexander Bittelman, a theoretician in the American Communist movement, stated that a distinction must be made between telling the workers the truth and telling them about the real nature of Communist objectives (Bittelman, "The Task of the Hour," *The Communist,* October 1921, p. 6):

> The whole truth does not mean telling the workers, at every turn of the game, that the seizures of power will have to be accomplished by force of arms. The injection of the idea of armed force, whether as a means of defense or offense, at the wrong psychological moment can only harm the revolutionary movement. There are stages in the class struggle that do not call for the introduction of the idea of armed force. *Telling the workers the whole truth about a given situation does not mean giving the workers the full Communist program.* [Emphasis in original.]

Although Bittelman is here speaking of the use of force and violence to establish the dictatorship of the

proletariat, the same principle is applicable to the introduction of almost all the Communist program to the uninitiated masses. The theory is that too much truth is hard for those not in the "vanguard" to bear. In actual practice this means that Communism must be temporarily disguised until the "advanced guard" of the Communist movement is in a position of complete authority. In Bittelman's terms: "A Communist program is not a bible to be brought to the workers always in full, with all its implications. It is a guide to action for the advanced guard of the working class—the Communist Party. It is to be applied in practice according to the demands of every particular situation." *Ibid.*

Numerous Communist writers popularized Stalin's theory of mass front organizations as the transmission belt between the Party and the workers. Otto Kuusinen, Secretary of the Comintern, stated in 1926 (quoted by Hathaway, "On the Use of 'Transmission Belts' in Our Struggle for the Masses," *The Communist*, May 1931, p. 413):

> The first part of our task is to build up, not only Communist organizations, but other organizations as well, above all mass organizations sympathizing with our aims, and able to aid us for special purposes * * *. We must create a whole solar system of organizations and smaller committees around the Communist Party, so to speak, smaller organizations working actually under the influence of our Party (not under mechanical leadership.)

Similarly, Hathaway wrote in 1931 (*id.* at 412):

> [W]e must break definitely with the conception that Communist work consists solely in direct efforts to build the Communist Party and in recruiting new members. We must learn to set up and work through a whole series of mass organizations and in this way also de-

> velop our Party work. Our chief error is our failure to understand the role of and to systematically utilize mass organizations * * * as transmission belts to the broad masses of non-party workers.

These mass organizations, according to Hathaway, operate as belts running in both directions—to convey the modified Communist message to non-Communist workers and to draw those workers into full-fledged Communist Party membership (*id.* at 412–413):

> The Communist Party is necessarily composed of the most conscious and self-sacrificing elements among the workers. These mass organizations, on the contrary, with a correct political line, can be made to reach many thousands of workers not yet prepared for Party membership. Through these organizations, led by well-functioning Party fractions, the Party must necessarily find its best training and recruiting ground. These are the medium through which the Party, on the one hand, guides and directs the workers in their struggles and, on the other hand keeps itself informed on the moods of the masses, the correctness of Party slogans.

Hathaway then emphasized that the success of the "front" strategy is totally dependent upon tight internal control of the mass organizations by Communist fractions or cells. These units are the key to the transformation of masses of workers into Communist Party members and the Communist Party into a mass party (*id.* at 414):

> The work of our comrades and units must be conducted in such a way that everywhere (in the factories, among the unemployed, among the negroes, etc.) we set up various organized groups under our influence and through which our comrades work. These groups, in turn,

> must be the instruments through which still greater masses of workers are organized for revolutionary struggle against the bourgeoisie. It is the principle of 'transmission belts' * * * which must be firmly established in our Party as the means of our transformation from a propaganda Party to a Bolshevik mass party.

Willy Muenzenberg set forth the goals of the Communist front strategy in a speech to the Sixth Congress of the Comintern in 1928 (*International Press Correspondence,* August 1, 1928, pp. 751–752):

> 1. To arouse the interest of those millions of apathetic and indifferent workers who take no part whatever in political events, who are not interested either in the economic or cultural struggle of the proletariat, who simply have no ear for Communist propaganda. These people we wish to attract and arouse through new channels, by means of new ways.
>
> 2. Our sympathetic organizations should constitute bridges for the non-Party workers * * * who have not yet mustered the courage to take the final step and join the Communist Party, but who are nevertheless in sympathy with the Communist movement and are prepared to follow us part of the way.
>
> 3. By means of the mass organizations we wish to extend the Communist sphere of influence in itself.
>
> 4. The organizational linking up of the elements in sympathy with the Soviet Union and with the Communists.
>
> 5. We must build up our own organizations in order to counteract the increasing efforts of the bourgeois and social-democratic parties in this respect, and
>
> 6. Through these sympathetic and mass organizations we should train the cadres of militants and officials of the Communist Party possessing organizational experience.

Muenzenberg then makes a final summary statement that "auxiliary organizations" should play a key role in bringing about the true revolution throughout the world (*id.* at 752):

> Our tactics should therefore be to win the old mass organizations that are swayed by the social democracy with whom we vie for influence, to extend and build up the mass organizations and to develop them into real mass organizations. * * * [F]ormation and extension of the mass organizations is of paramount importance to the growth of the Communist Parties; the mass agitation is an important part of the United Front tactics. From the Communist propaganda groups of 1919 we must grow into real revolutionary mass parties, and our auxiliary organizations into mass organizations gathering millions of workers, in order to be able to inaugurate and lead the struggle for power in all countries.

B. The tactics of the Communist front

We have described the origins of the Communist front concept and its theoretical development by Communist leaders and theoreticians. We shall now show how this theory has been applied.

The most obvious kind of organization with potentiality for subversion was perhaps the trade union. Lenin had described how this was to be done (*Left Wing Communism: An Infantile Disorder* (International Publishers) 38):

> It is necessary to make any and every sacrifice * * * to resort to all sorts of devices, maneuvers, and illegal methods, to evasion and subterfuge, in order to penetrate the trade unions to remain in them, and to carry on Communist work in them at all costs.

Similarly, in advising Communists who had been expelled from trade unions on means of re-infiltration, Lenin told them "to practice trickery, to employ cunning, and to resort to illegal methods—to sometimes even conceal the truth." Lenin, *Should Communists Work in Reactionary Trade Unions?*, II *Selected Works* 597.

Despite Lenin's writings, before the adoption of the front theory in 1920, there existed a deep antagonism within the Communist movement toward other movements, such as trade unionism, which appealed to the workers. The Communists found it difficult initially to share the affection of the "masses" with any other movement. Thus, as late as 1919 and 1920, the Communists generally scorned the labor movement as nonrevolutionary and ineffectual. As indicated by the Communist press of that period, it was to be destroyed rather than used. "Trades Unionism is the arch enemy of the militant proletariat. This is one of the tasks of the Communist Party—the destruction of the existing trades union organizations." *The Communist,* October 18, 1919, p. 2. As one Communist leader, Charles Ruthenberg admitted, "The Communist Party of 1919 stood outside of the labor movement, endeavoring to draw the workers into its ranks through agitation and propaganda which pointed to the necessity of a revolutionary party fighting for the overthrow of capitalism." *The Workers Monthly,* September 1926, p. 484. Theodore Draper concludes that the Communists held themselves aloof from the economic and political unrest in 1920 because "[i]t was not revolutionary enough." Draper, p. 201.

Upon adoption of the front theory, the Communist attitude toward labor unions abruptly changed. The only necessary prerequisite for the conversion of a group into a Communist front is the existence of some sort of organization. The nature of the or-

ganization or its political acceptability could be completely disregarded. According to one writer, "Communists are not to be dissuaded from doing their work within mass organizations simply because of a 'reactionary' leadership or program." Selznick, p. 121.

As successful devices for grievance purposes, for gaining better wages and working conditions, and for general purposes of presenting the demands of the workers in a united fashion, workers' organizations had become popular and widespread among the industrialized nations. The Communists saw an opportunity to use those organizations already in existence and to create similar organizations as fronts. Therefore one of the statements adopted at the Second Congress of the Communist International in 1920 was (Chamberlin, *Blueprint for World Conquest* 79):

> The Communists have no fear of the largest workers organizations which belong to no Party, even when they are of a decidedly reactionary nature (yellow unions, Christian associations, etc.). The Communist Party carries on its work inside such organizations and untiringly instructs the workers.

Indeed, this Congress went even further and required as one of the twenty-one conditions for admission to the Comintern (*Theses, Statutes, and Conditions of Admission to the Third (Communist) International,* Hearings before the House Special Committee on Un-American Activities, 76th Cong., 1st Sess., vol. 7, p. 4669):

> Every party which wishes to join the Communist International must carry on systematic and persistent Communist activity inside the trade unions, the workers' councils and factory committees, the co-operatives, and other mass workers' organizations. Within these organizations Communist cells must be organized

> which shall by persistent and unflagging work win the trade unions, etc., for the Communist cause. In their daily work the cells must everywhere expose the treachery of the social-patriots and the instability of the "centre." The Communist cells must be completely subordinate to the Party as a whole.

In accordance with this resolution the British Communist Party instructed its members (Bulletin of June 24, 1926) to get elected where possible to important conferences of the British Labor Party (from which Communists had previously been expelled) and to operate according to instructions from Communist headquarters. The members' duties were to keep their superiors informed of conference activities, to propose and act on resolutions in cooperation with their fellow Communists, and to form secret "fractions" in the Labor Party and in trade unions. The British representative on the Executive Committee of the Communist International reminded the agents conducting such infiltration "that in whatever capacity our Party members are serving in the general working-class movement, their Party allegiance must supersede all other responsibilities." Laski, *Communism* 204–205. The necessary effect of this strategy is described by Harold Laski (*id.* at 210):

> The more unified, in short, the working-class becomes, the nearer it moves to power; and even those workers who see nothing Communist in united action will find, when they are engaged in it that they have been pursuing a Communist policy without knowing it. * * * The tactic of the United Front is, then, a Machiavellian maneuver dictated by the necessities of the international situation; it is the policy which the French socialist, Longuet, not

> inaptly described in the famous line of Racine: "I embrace my rival, but it is the better to choke him."

The success or failure of the take over of Communist factions is, of course, dependent almost entirely upon the abilities and flexibility of the Communist functionary selected to lead one of these fronts. He must be able to infiltrate an existing group, get himself elected to a responsible position, and exert his influence in such capacity in favor of the Communists. This requires a particularly dedicated Communist—a "professional revolutionist." J. Peters, *The Communist Party—A Manual on Organization* (*1935*), reprinted in Hearings Before the House Special Committee on Un-American Activities, 76th Cong., 1st Sess., Part I, App., p. 734. He describes such an individual as a person

> * * * ready to go whenever and wherever the Party sends him. Today he may be working in a mine, organizing the Party, the trade unions, leading struggles; tomorrow, if the Party so decides, he may be in a steel mill; the day after tomorrow, he may be a leader and organizer of the unemployed.

It is expected that a few such well-placed Communists in an organization can direct that organization's total energies for the good of Communism. According to Lenin "On the Road," *Lenin on Organization* (The Daily Worker Publishing Co.) 202):

> [E]very nucleus and every Party workers' committee must be a base supporting the agitational, propaganda and organizing work among the masses, i.e., they must go wherever the masses are going and at every step endeavor to direct their consciousness towards socialism, they must

> associate every private question with the tasks of the proletariat, they must use every attempt at organization to further the cause of class consolidation, and by their energy and moral influence (and not, of course, by their titles and ranks) gain the lead in every legal proletarian organization. * * * Under all conditions and circumstances, and in every possible situation, they will carry on a Party policy, they will influence their environment in the spirit of the Party and will not allow their environment to engulf them.

Ultimate control of the organization is accomplished by the cooperation of a number of infiltrators in the form of a Communist "nucleus." The Second Congress of the Communist International in 1920 described the operation of these nuclei (quoted in Selznick, p. 66):

> The fundamental principle of all organization work of the Communist Party and individual Communists must be the creation of Communist nuclei everywhere where they find proletarians and semi-proletarians—although even in small numbers. In every Soviet of Workers' Deputies, in every trade and industrial union, cooperative association, factory, tenants' union, in every government institution everywhere, even though there may be only three people sympathizing with Communism, a Communist nucleus must be immediately organized. It is only the power of organization of the Communists that enables the advance guard of the working class to be the leader of the whole class. Communist nuclei working in organizations adhering to no political path must be subject to the Party organization in general, whether the Party itself is working legally or illegally at the given moment. Communist nuclei of all kinds must be subordinated one to another in a strictly hierarchical order and system.

We have seen that well-established mass organizations are special targets of Communist infiltration and control. The advantage of this tactic is the capture of an operating organization with a fixed reputation. However, it may be difficult to subvert the goals of established organizations and the replacement of their leadership against the will of most of their members. Therefore, as indicated above, not all front organizations are the result of Communist conversion of an existing organization; many fronts are specially created. As Carew Hunt has described the use of these new organizations (Hunt, p. 181):

> The most effective arrangement has been to appoint as President a politically colorless but otherwise prominent non-Communist, but to have a Communist or crypto-Communist Secretary in the background who exercises control. Such organizations are of the utmost assistance to the Communists in their task of manipulating public opinion. For the support which the latter receive from left-wing elements is of incalculable value. A government has only to suppress a Communist newspaper for sedition, or to arrest a leader for proved treasonable conspiracy, to arouse an outcry, in the name of freedom of the press or of political liberty, led by persons who are not Communists at all, but whom no amount of experience will convince that the principles for which they stand would count for nothing were the Communists themselves to come into power. For the Communist principle has always been that which Montalembert accused contemporary Catholics of adopting: "When I am the weaker, I ask you for liberty because it is your principle; but when I am stronger, I take it away from you because it is not my principle."

Another author describes the steps taken in the creation of what he refers to as "peripheral organizations" (Selznick, pp. 123–124):

> 1. A group of reliable nonparty friends of the Communist Party—or secret Party members—acts as an initiating nucleus in issuing a call for the establishment of the organization. This committee draws up a provisional program which has the approval of the Party.
>
> 2. On the basis of this provisional program, a larger group, but still not the public at large, is canvassed in a search for a list of sponsors who can invest the new organization and it program with the requisite legitimacy.
>
> 3. A provisional secretary is appointed, usually a Party member, whose access to the files and personnel of the organization may be exploited for Party purposes. In some cases, the secretary is given unusual powers in conducting the affai.. of the organization.
>
> 4. An effort is made to have some prominent public figure assume the presidency; if such a person is likely to balk at Communist control, it is desirable that he be one who is occupied with other affairs and hence unable to follow the activities of the organization too closely. In any case, such a person can easily be surrounded with a dependable executive board so that in case of conflict he would have no recourse but to resign.
>
> 5. The provisional program and provisional secretary assume the status of accomplished facts and are usually confirmed when the organization meets. In effect, these matters are never opened for serious discussion.

C. The development of the United Front

1. The "United Front" strategy of Communism is closely related to the use of Communist "fronts"

which is described above. In many respects they describe two different aspects of the same strategy. Whereas a Communist front describes an organization which has been organized or taken over covertly by Party members, the "United Front" is the open cooperation by the Party with other mass organizations devoted to working class problems. The primary objective of this approach was not to help solve these problems, but to create an opportunity for Communists to infiltrate and convert the cooperating organizations into fronts. As a delegate to the Second Comintern Congress in 1920 stated (Tyler, *The United Front* 11):

> Comrades of the Third International: There is a movement on foot in Europe for a United Front. It does not matter whether we are in favor of it or not; our tactics compel us to appear to be in favor of it; but we ask the Communist sections all over Europe to take part in the creation of the United Front, not for the purpose of making it effective, but for the purpose of strengthening the Communists through direct propaganda inside the organizations taking part.

Douglas Hyde gives the following succinct definition of this movement (*The Peaceful Assault: The Pattern of Subversion* 96):

> The United Front is the means by which a small minority of Communists can influence and use large masses of people and so come to power with the support of people who have no real sympathy for their aims and beliefs. The essence of the tactic consists in discovering popular slogans and genuine grievances around which joint activity may be developed and then, in due course, using this activity to strengthen the Communist Party and to destroy its rivals.

Trotsky again is the Communist leader most responsible for originating and directing the strategy of the United Front. The Unified Front was opposed by many of the leading revolutionaries since they considered any cooperation between the Party and other mass organizations—even for the ultimate purpose of subverting and dominating them—to be compromise and "rightist" deviation. In rebutting this position, Trotsky argued. (Trotsky, "The Tactics of the United Front," reprinted in the *Fourth International,* March 1941, pp. 83–84):

> The Party must assume the initiative in securing unity in this current struggle. Only in this way will the Party draw closer to these two-thirds which do not as yet follow its leadership, which do not as yet trust it because they do not understand it. Only in this way can the Party win them over.
>
> * * * * *
>
> If the Communist Party did not seek for organizational avenues to the end that at every given moment joint, coordinated actions between the Communists and the non-Communists (including the Social-Democratic) working masses were made possible, it would have thereby laid bare its own incapacity to win over—on the basis of mass actions—the majority of the working class. It would degenerate into a society for Communist propaganda but never develop into a party for the conquest of power.
>
> It is not enough to have a sword, one must give it an edge; it is not enough to have an edge, one must know how to use it.
>
> After separating the Communists from reformists it is not enough to fuse the Communists together by means of organizational discipline; it is necessary that this organization should learn how to guide all the collective

> activities of the proletariat in all spheres of its living struggle.

Once again, although Trotsky himself was rejected, his ideas were not. This policy toward "reformist" groups survived and became the official Communist position concerning the "United Front." As Stalin described it (*Foundations of Leninism* (International Publishers) 101):

> To a reformist, reforms are everything while revolutionary work is just something to talk about, a diversion. * * * To a revolutionary, the opposite is the case; the main thing is the revolutionary work and not reforms, for reforms are the mere by-product of the revolution. * * * The revolutionist will accept the reform in order to use it as a means wherewith to link legal work with illegal work, in order to use it as a screen behind which his illegal activities for the revolutionary preparation of the masses for the overthrow of the bourgeoisie may be intensified.

Thus, a front does not exist for its own sake or for any good it might do. It is a tool to be used, a means to achieve "illegal" ends.

2. Having described the theoretical basis of the United Front, we will now discuss its application to six historical periods.

a. The period from 1919 to 1928 is known as the "United Front from Above," since primary emphasis was placed on influencing the leaders or capturing the leadership of large workers' organizations throughout the world. Emphasis was placed upon specific working-class demands common to various organizations. However, almost all appeals for cooperation were made by the Communists to the leaders of workers' groups rather than to the workers themselves. Cooperation was sought from the various socialists poli-

tical parties throughout Europe, but, since the Communists insisted upon their own revolutionary program, little real cooperation was attained. For this reason the "United Front" failed to materialize to any meaningful extent during this period. Overstreet and Overstreet, *What We Must Know About Communism* [hereinafter Overstreet] 145.

b. From 1928 to 1933 the world Communist movement followed the "United Front from below," with attention given to direct appeals to the masses, particularly in the trade unions. Attention shifted from cooperation among workers' organizations to infiltration and control of individual "reformist" groups by Communists. We have described above the general strategy for this kind of subversion. More specifically, the aim was to creat dissension within the ranks of the workers and capture positions of leadership when established officers were forced out (Degras, *The Communist International, 1917–1940: Documents,* 257):

> Koenen (an officer of the International) emphasized the importance of the trade union work; the Communist cells in these were "to annoy, to torment, and to drive to desperation" the trade union bureaucracy. Where Communist parties were illegal they must establish "sympathizing" organizations through which the illegal party could exert its influence.

Besides the subversive activities within existing groups, "transmission belts" were created as special links from the "advanced guard" of the proletariat to the uncomprehending masses. However, most of these specially created front organizations were so patently Communist controlled and identified with the Party that little attraction was offered to the working man. Overstreet, p. 149; Selznick, p. 137.

c. From July 1935 to August 1939, the movement became the "People's Front against Fascism" in response to the threat of the Axis powers to the Soviet Union. The program was described by Georgi Dimitroff, General Secretary of the Communist International. Dimitroff, *The United Front: The Struggle Against Fascism and War* 40:

> In forming the Anti-Fascist People's Front, a correct approach to these organizations and parties which have in them a considerable number of the working peasantry and the mass of the urban petty bourgeoisie is of great importance. * * * Under certain conditions, we can and must try to draw these parties and organizations or certain sections of them to the side of the Anti-Fascist People's Fund, despite their bourgeois leadership.

Dimitroff emphasized the necessity of abandoning old Communist antagonisms toward Social-Democratic political parties and "Reformist" organizations and relaxation of the militant "left sectarian" tactics ordinarly employed by the Communist Party (*id.* at 37):

> Communists, of course cannot and must not for a moment abandon their own independent work of Communist education, organization and mobilization of the masses. However, to ensure that the workers find the road of unity of action, it is necessary to strive at the same time both for short-term and for long-term agreements that provided for joint action with social-democratic parties, reformist trade unions and other organizations of the toilers against the class enemies of the proletariat. The chief stress in all this must be laid on developing mass action locally, to be carried out by the local organizations through local agreements.

During this period the Communist concern for cooperation was genuine, due to the rise of fascism in Germany, Italy, and Japan. The distinct threat posed by these powers to the Soviet Union prompted it to concern itself with its own immediate welfare rather than the subversion of other governments. Selznick, pp. 138–144.

Nonetheless, in their efforts to win sympathy and support from the peoples of the world the Communists did not abandon their United Front tactics. This has been described in the candid analogy used by Dimitroff (p. 52):

> Comrade, you remember the ancient tale of the capture of Troy. Troy was inaccessible to the armies attacking her, thanks to her impregnable walls. And the attacking army, after suffering many sacrifices, was unable to achieve victory until with the aid of the famous Trojan horse it managed to penetrate to the very heart of the enemy's camp.
>
> We revolutionary workers, it appears to me, should not be shy about using the same tactics with regard to our fascist foe, who is defending himself against the people with the help of a living wall of his cutthroats.

Special attention was paid to the use of the "Trojan Horse" approach among charitable, civic, and fraternal organizations and among racial and ethnic groups particularly disturbed by the rise of fascism. As in the past periods, if no organization appropriate for propaganda purposes existed in a particular area, new groups were created. Overstreet, p. 150; Selznick, p. 145.

d. With the signing of the Stalin-Hitler mutual non-aggression treaty in August 1939, Communist strategy was forced to change abruptly. Instead of attempts to create a militant anti-fascism within na-

tions such as the United States and Great Britain, the "United Front against Imperialism" propagandized against these same nations from 1939 to 1941 as "imperialistic warmongers" who were to blame for world unrest. Slogans designed originally to "get America into the war" were changed overnight to "keep America out of the war." Front groups especially created to preach anti-fascism either had to disband completely or to change their course radically in order to advocate that which they had decried only a short time before. Overstreet, pp. 179–180; Daniels, *A Documentary History of Communism* [hereinafter Daniels] 121–124.

e. The United Front strategy underwent another radical shift with the German invasion of Russia in June 1941. The Communists again undertook to cooperate with non-Communist nations. For example, in the United States the Communist Party was dissolved, at least in name, and its activities taken over by the Communist Political Association. During the war years all front activities were devoted to the encouragement of the war effort. Particular attention was given to the mobilization of pro-Soviet sentiment and to the promotion of all programs designed to support the Russian military effort. Overstreet, p. 153; Daniels, pp. 126–134.

f. From 1945 to the present Communist activities have concentrated on the "United Front for Peace." The Communists' primary goal since the end of World War II has been to cast the Soviet Union in the role of the nation most interested in world peace and the United States and its allies as the aggressors interested only in colonialism and world domination. Many of the front organizations originally created to promote goodwill and cooperation between the allied powers during the war became too closely identified

with this position to be of any subsequent use and were, therefore, discarded. New fronts were started with the announced aims of promoting the "peace-loving" nature of the leaders of the Communist nations. Overstreet, pp. 182–186.

Throughout all these periods a key characteristic of a Communist-front organization, and an indication of its external control, have been its formation as a result of a Communist interest in a particular cause. This tactic was recognized and promoted by Lenin himself. "We would be very poor revolutionaries," he wrote, "if, in the great proletarian war for emancipation and socialism, we did not know how to utilize every popular movement against each separate disaster caused by imperialism in order to sharpen and extend the crisis." Lenin, *Discussion of Self-Determination Summed Up,* XIX *Collected Works* 303. It was immaterial for these purposes whether the support gained was permanent or not, since the purpose of exploiting a cause was to create disorder and to use events and casual allies to the greatest advantage. As Lenin further stated, the Communist movement should use "every, even the smallest opportunity of gaining a mass ally, even though this ally be temporary, vacillating, unstable, unreliable, and unconditional." *Id.* at 305.

D. Use of Communist fronts in the United States

In the United States the work of the Communist Party during the 1920's and 1930's was centered on the infiltration of mass organizations and creation of front organizations particularly among workers and farmers. For example, according to the American Communist Party Manual, "[w]e have to work untiringly in the existing farm organizations in order

to isolate the rich farmers, to win the poor farmers, and the sections of the middle farmers to the side of the workers, and at least to neutralize other sections of the middle farmers." Quoted in Tyler, p. 11.

For example, the Communist Party attempted to capture and control the Farmer-Labor Party of America at its convention in 1923. Although outwardly the only Communists present were Party delegates, "[t]he Communists were represented not alone by the Party and its youth section but by a hundred and one bogus organizations, known among radicals as 'innocents' clubs." Tyler, p. 11. By their tactics the Communists managed to insinuate themselves into all the other organizations present, and sought to elect a national executive committee made up entirely of their members. An official of the Farm-Labor Party stated: "What the Communists have done is on the level of a man being invited into your house as a guest then, once in the house, seizing you by the throat and kicking you out of the door." *Id.* at 11–12. This incident illustrates the use of affiliated front organizations to capture and influence a mass organization and in turn convert it into a front.

Front organizations must serve the Party's interests, and once they have served their purpose they are either cast aside or reoriented toward another goal. The United Farmers League was created in the 1920's as the Communist Party's own agrarian organization. When it became evident that the League was not succeeding, the issue arose within the Party whether to abandon it and concentrate on infiltration into other farm groups. C. Hathaway, a Party member, opposed abandonment because the League's use as a front was not exhausted (Hathaway, "Let Us

Penetrate Deeper into the Rural Areas," *The Communist,* July, 1935):

> There is no doubt that tendencies toward liquidation of the UFL reflect a desire to duplicate the changes made in our trade union policy. This in some cases has been furthered by the correct directives given to our farm comrades to concentrate on the penetration of the mass farmers' organizations. [But] the main problem is to utilize the UFL as an instrument for the development of the United Front with other farm organizations, locals, county bodies, etc., which are ready to fight on the basis of a class struggle program.

Thus, the continued existence of the League had the advantage of permitting its Communist leaders to participate in and perhaps influence the policies of other farm organizations.

The Communist Party has also attempted infiltration and front tactics in the field of labor. A great amount of Communist effort has been spent in this country in an effort to control labor unions. An equal or greater amount of effort has been spent by non-Communist labor leaders in the largely successful attempt to frustrate this. A report of a C.I.O. committee explains the Party's techniques ("Report of the Executive Board Committee Appointed by President Murray to Investigate Charges against International Longshoremen's and Warehousemen's Union," (*Official Report on the Expulsion of Communist Dominated Organizations from the C.I.O.,* C.I.O. publication No. 254 [hereinafter CIO], p. 101):

> The techniques used by the Communist Party in achieving control of a union and in then using the union for its purposes vary according to the nature of the industry, the tradition of the union can be subjected to rigid control. As these factors change from time to time, the operation of the Party group within the union (ie. the 'Party fraction') changes to meet the

> new situation. Although the Party fraction functions in a highly mechanical fashion on the theoretical level, accepting without question the line handed down from above, its tactical maneuvering may shift from day to day and even from meeting to meeting depending upon the particular needs of the moment. Thus, the operation of the Party fraction within one union may be completely different from that within another union. In all cases, however, the Party fraction in the union acts as a disciplined group and takes the orders of the day from the Party functionary assigned to or responsible for trade union work.

The Communist Party made a major attempt to infiltrate and control the United Automobile Workers in the 1940's and 1950's. Walter Reuther, the union's president who led the fight against this effort, has described the issues (*Selected Papers* 25, 28):

> We understood that the alternative to a finish fight was Communist control of our union. * * *
>
> * * * * *
>
> This fanatical preoccupation with conquest of organized labor, this elaborate apparatus of propaganda and disruption, the Stalinists, over the past several years, have brought to bear on the United Automobile Workers, which they regard as the strategic union of the CIO.

The methods followed by the Party are described by Reuther in some detail (*id.* at 29):

> During the twelve years the UAW-CIO has existed as an international union, the Communists have placed only one party member in the top leadership and only two of the faithful on our International Executive Board. Yet they have prospered in our midst until recently, because they so skillfully cultivated persons who could be made, in some degree, to serve their

> purposes. It was through clever manipulation of such people that the Stalinists acquired an influence in the UAW vastly disproportionate to the numbers of their convinced adherents.
>
> Working through such strategically placed victims, the Communists captured the leadership of a number of local unions and could count on assistance from certain members on the regional and international union staffs. Machine-made resolutions, promoting the Communist line would pop up at union meetings, and Communist adeptness at parliamentary maneuver would get them by an unalerted membership.
>
> The Communists are highly skillful in using the forms of democracy to subvert democracy. But in local after local union, non-Communist members, gradually and after many painful experiences, awoke to the Party's contempt for the rank and file, to its methods of discouraging attendance at meetings, to its whole strategy of spreading conflict and sowing confusion.

In 1947, the Communists attempted unsuccessfully to merge the Farm Equipment Workers' Union, which they controlled, with the United Automobile Workers (*id.* at 29–31):

> The Stalinists suffered their first crucial preconvention defeat when their proposal to merge the Communist-dominated Farm Equipment Workers with the UAW was rejected by UAW local unions.
>
> In the summer of 1947, a committee of UAW opposition board members had been meeting secretly with officials of the FE [Farm Equipment]–CIO. Without prior notice, they presented to a UAW Executive Board meeting a plan for merging the two organizations, both of which have jurisdiction in the agricultural implement industry. * * *
>
> The FE merger proposal was a complete

fraud. Its sponsors had only one objective: to bring five hundred additional left-wing votes to bear in the UAW convention, then less than five months away. It did not provide for a true merger at all, but rather for the temporary establishment of a union within a union. Grant Oakes, FE president, admitted to a *Daily Worker* correspondent that the plan, if carried out, would set up a "powerful and autonomous FE Division of the UAW–CIO, throughout the U.S. and Canada."

The FE was to enter the UAW with its staff intact; FE members, together with UAW members in the farm implement industry, were to be given special membership cards in an "FE Division" of the UAW; the whole plan was in violation of the UAW constitution and organizationally unsound. It would have meant a retreat from industrial unionism to craftlike autonomy at a time when the industrial form of organization was under attack from Congress. But the Communists didn't care. They were making a bid for control of the nation's biggest union. This was the showdown.

The plan was approved by the left-wing majority of the UAW Executive Board. UAW locals were given less than a month to debate the issues and set up a poll in which no alternative set of proposals would be available. Those of us in the leadership and ranks who favored real merger but opposed the provisions of the left-wing plan were placed in the uncomfortable position of blocking "unity."

During 1949 and 1950, the C.I.O. expelled from its ranks eleven international unions which had been found to be Communist-dominated on the basis of full hearings. For example in 1950, an investigating committee, appointed by C.I.O. President Philip Murray, found that (CIO, pp. 111, 115):

The absence of any conflict between the position of the Party and the position of this

> Union under the leadership of its international officers and board, is, therefore, of great significance. The constant parallel between the position of the Communist Party and the position of the ILWU cannot possibly be explained as coincidence, or as the simultaneous but independent adoption of similar policies. For the policies of the Communist Party, as we have stated, have undergone repeated violent shifts which are explainable only on the basis of the party's subservience to the interests of the Soviet Union. And the policies of the ILWU have, in each instance, undergone the same sinister shift.
>
> * * * * * *
>
> * * * [T]he policies of the International Longshoremen's and Warehousemen's Union are consistently directed toward the achievement of the program and the purposes of the Communist Party rather than the objectives and policies set forth in the CIO constitution.

The committee found that Party members and functionaries controlled the Longshoremen through key positions in the Union and directed Union policies and activities to Communist purposes. Substantial evidence showed that even non-Communist Union officials took directions from Communist Party officials in determining Union policies (*id.* at 111, 113):

> The documentary evidence of the subservience of ILWU, through its top leadership, to the Communist Party was corroborated by the oral testimony of Mr. Quill and Mr. Stone, both of whom gave testimony showing direct Communist control of ILWU. Both testified that Harry Bridges had, over a period of years, participated in numerous secret meetings between Communist Party functionaries and officers of Communist-controlled unions in the CIO at which the party functionaries in-

> structed the union officers as to the party line and as to the positions that they were to take in the CIO and in their unions. Needless to say, these meetings were concealed from the CIO and from the rank-and-file membership of the unions. Such meetings took place from the inception of the CIO, and continued, to Mr. Stone's knowledge, until 1945, and, to Mr. Quill's, until 1948, those being the dates of their respective breaks with the party. Such meetings took place contemporaneously with every CIO convention, and were often held at the time of CIO executive-board meetings. The party functionaries who participated in these meetings included Eugene Dennis, William Z. Foster, John Williamson, Roy Hudson, Robert Thompson, Jack Stachel, and William Schneiderman.
>
> * * * * * *
>
> Quill and Stone testified, and the committee finds, that Bridges did participate in Communist Party fraction meetings and did receive at these meetings instructions from party representatives as to the line that was to be carried out, not only in the ILWU itself but also within CIO. The documentary evidence, almost all of its official ILWU material, further clearly proves that the efforts of the party to control the policies of ILWU were highly successful.

The report emphasizes that Communist control of union leadership did not necessarily mean that rank-and-file members were themselves Communists or were even aware of the promotional and propaganda purposes for which their union was being used by its leaders (CIO, p. 114):

> The committee wishes to make it perfectly clear that its findings as to ILWU are based, as they must be, on the policies and activities of the union under the leadership of its present international officers and executive board.

> Those findings carry no implication that the individual members of the union are Communists or favorable to communism. To the contrary, the committee is persuaded that many of the members of ILWU have been taken in by the evasion and the subterfuge, the devices and the maneuvers, which the Communist-minded leaders of this union have used to maintain themselves in power, concealing all the while the fact that the union's policies and activities were not the real informed decision of the members but determined in accordance with the line of the Communist Party.

Similarly, the investigating committee found as to the United Public Workers that (CIO, p. 55):

> The members of the UPW are, in the main, Government employees. Although the persistent Communist Party line tactics of its leadership have driven out of the UPW the major portion of its American membership, the committee has no doubt that there still remain within the union members who are fooled by the pseudo-unionism and the false militancy of the UPW leadership. And there are undoubtedly others who have opposed that leadership but have remained within the union. But the committee wishes to make it crystal clear that its condemnation of that leadership, and of the union, does not necessarily reflect the condemnation of each individual member. But the committee is forced to conclude that the leadership of the union has directed and does direct the policies and activities of the union consistently toward the achievement of the program and purposes of the Communist Party.

Another union investigated and expelled from the C.I.O. at the same time was the United Office and Professional Workers. As in the case of the Longshoremen, the Office Workers adopted political poli-

cies and attitudes strikingly parallel to those of the Communist Party (CIO, pp. 61–62):

> Never in the history of the UOPWA has any policy ever been adopted which in any way runs counter to the policies of the Communist Party or to the interests of the Soviet Union as those interests are reflected in the program of the Communist Party. If the Communist Party program had been a consistent one, this absence of conflict might not be significant. But, in view of the fact that in a period of ten years the Communist Party has taken almost every conceivable position on every issue of public importance in the United States, the absence of any conflict between the position of the party and the position of this union is of great significance.

More specifically, the committee said that the Union's positions were the same as those of the Party concerning the withdrawal of United States troops from China and Greece; the Truman Doctrine; the Marshall Plan; and the Atlantic Pact. The committee concluded that (*id.* at 68):

> The history of this union, when compared with the history of the Communist Party on the one hand, and, on the other hand, with any possible straightforward trade-union position, demonstrates beyond question the present character of the UOPWA's leadership and shows beyond doubt that the present similarity of the program of the Communist Party and of the UOPWA is not just a coincidence but the result of devotion by this union to the over-all purposes of the Communist Party rather than the objectives of the CIO.

Another union investigated by and expelled from the C.I.O. was the National Union of Marine Cooks and Stewards. The C.I.O. investigating committee

found that: "At no time during the 12-year period since 1938 has there been one single instance of MCS' deviating in any substantial degree from the line of the Communist Party." CIO, p. 120. The committee described the basic issue in the following terms (CIO, p. 125):

> The issue posed by the charge against MCS is whether it is an honest trade union, genuinely devoted to the advancement of the cause of American labor and American democracy, or a union whose policies and activities are determined by the philosophy and the program of the Communist Party. The issue is one of basic loyalty. The purposes of the Communist Party are wholly antithetical to the basic objectives of American industrial unionism. And the question as regards MCS is whether that union is devoted primarily to the CIO on the one hand or to the Communist Party on the other.

The committee found that the Marine Cooks and Stewards Union was totally subservient to the interests of the Communist Party. *Ibid.* The C.I.O. investigating committee likewise concluded concerning the American Communications Association that (CIO, p. 83):

> The ACA has followed the tortuous paths of the Communist Party for years. Over the years it has been interventionist, isolationist, interventionist and then isolationist again. It has been pro-Roosevelt, then anti-Roosevelt, then pro-Roosevelt again. And ACA's occupancy of these positions has invariably coincided with the Communist Party's tenure of them. ACA's contradictory positions cannot possibly have resulted from any honest estimation of the interests of its membership. They can only have resulted from subservience to the interests of the Communist Party, and through that party, to the Soviet Union.

Similar findings were made by C.I.O. investigating committees concerning the International Union of Mine, Mill, and Smelter Workers (CIO, p. 11); the Food, Tobacco, Agricultural, and Allied Workers of America (CIO, p. 23); and the International Fur and Leather Workers Union (CIO, p. 84).

At its convention in 1949, the C.I.O. adopted resolutions expelling the United Electrical, Radio and Machine Workers and the Farm Equipment Workers from that organization. As to the Electrical Workers, the resolution adopted the following finding (CIO, p. 6):

> The UERMWA has been selected by the Communist Party as its labor base from which it can operate to betray the economic, political, and social welfare of the CIO, its affiliates and the general membership. The program of the UERMWA leadership that has gradually unfolded is but an echo of the Cominform. At the signal of the Cominform, the Communist Party threw off its mask and assumed its true role as a fifth column. Its agents in the labor unions followed the Communist Party line. The UERMWA leadership abandoned any pretense of loyalty to the CIO and its program. The record is clear that wherever the needs of the Communist Party in the Soviet Union dictated, the leadership of the UERMWA was always willing to sacrifice the needs of the workers. The evidence, known to every CIO member, is overwhelming * * *.

According to the C.I.O. resolution, the leadership of the Electrical Workers, in defiance of C.I.O. officials, secretly arranged a merger with the United Farm Equipment and Metal Workers as the first step in the long-range plans of the Communist Party to establish a Communist-dominated labor federation in America.

The following succinct description of Communist tactics in the domination of trade unions is found in a work describing the C.I.O.'s struggle with attempted Communist domination (Kampelman, *The Communist Party vs. The C.I.O.* 7):

> Disciplined and organized as a solid phalanx, they joined freely in argument and parliamentary maneuver for which they are well trained. They are good at fighting delaying actions and often succeed in wearing out the opposition. When they are not able to out-maneuver their opponents, they are likely to prolong union meetings until many members, exhausted and sleepy, leave for home. As they do, the Communist tide rises. Communists arrive early and stay late. The later the hour of the vote, the greater the likelihood of the Communist Party bloc prevailing. With few exceptions a cardinal principle of Communist policy is to deny charges of Communist identity or influence.

An illustration of a front used by the Communists to appeal to ethnic groups is the International Workers Order. Founded ostensibly as a mutual benefit society in 1930, the Order stressed insurance, social, and educational programs principally for various immigrant groups. Selznick, pp. 115–117. The I.W.O. originally cooperated openly with the Communist Party in the United States. But the Party soon decided that "the organization could be used as a specialized weapon to attain specific objectives, rather than remain simply a sort of political halfway house." *Ibid.* More specifically the I.W.O. was used to influence nationality groups to exert pressure on the United States government to adopt policies toward their home countries which would prove favorable to the world Communist movement. The method is

described in Moore, "The Communist Party of the U.S.A.: Analysis of a Social Movement," *American Political Science Review,* February 1945, p. 38:

> Among immigrants from Europe, the CPUSA and its sympathizers form a distinct political *bloc* within each national or ethnic group, agitating on behalf of Soviet interests as they relate to this group. * * * As a rule, the bloc is represented by a foreign-language newspaper closely following the party line as laid down by the Daily Worker. At present there are just short of 30 foreign-language Communist-line newspapers, with a total circulation of over 400,000. Further activities among East-European and Italian immigrants follow the established pattern of social gatherings and political activities focused around mutual benefit insurance societies. The I.W.O. with a membership of nearly 136,000 scattered amongst these ethnic and cultural groups, represents the Communist faction in each of them.

Besides labor, farmer, and ethnic fronts, and other fronts in the United States have been created to appeal to veterans, youth, economic groups, racial groups, minority groups generally, women, the aged, or the unemployed. Another approach is to create a front group to deal with a particular issue or problem as it arises. This is usually called an *ad hoc* front and is often used to promote interest in the defense of alleged espionage spies or of Communist leaders accused of crimes. See Appendix C below.

These various kinds of fronts perform numerous, different functions. For example, Theodore Draper describes how the Communist Party used front organizations to take advantage of the unsettled situation after World War I in the labor movement (Draper, p. 13):

> A series of big, unusually violent strikes erupted all over the country. Three of them were raging simultaneously in February 1919. In Seattle, Washington, the first American general strike closed down the entire city. In Lawrence, Massachusetts, over 30,000 textile workers shut down every mill in the city for sixteen weeks. In Butte, Montana, for the third time in three years, the miners walked out in rebellion against a wage cut. In some places, the terminology of the Russian Revolution was noticeable. In Butte, Montana, the strike was controlled by "The Soldiers', Sailors', and Workers' council" to which every union except that of the engineers was affiliated. In Portland, Oregon, John Reed's birthplace, a "Council of Workers, Soldiers, and Sailors" was formed "to strike the final blow against the capitalist class." The Portland "Soviet" inspired the *Soviet World* of Philadelphia to predict the birth within the next two years of the Socialist Soviet Republic of the United States of America. Both "Soviets" expired with the strikes. Only the Lawrence strike succeeded in winning any concessions for the workers but for a while the whole labor movement seemed to be rocking with the split of the revolt.

Besides creating unrest, a front may be used to produce and disseminate political propaganda. Frequently, this propaganda supports Soviet foreign policy. A government's own declarations about its own good intentions, or those of the American Communist Party concerning the Soviet Union, are easily discounted as obviously self-serving. However, an "independent" organization whose stated aims are "international understanding," "peace," and the "welfare of mankind" is able to take a position favorable to Communist policies and thereby influence the thinking of those who are unaware of that organiza-

tion's true loyalties and allegiance. Kirkpatrick, *Target the World* [hereinafter Kirkpatrick] 29. Such propaganda by a front group aids Communist objectives in two ways (*id.* at 30):

> Here is a modern Communist version of the "Mister Gallaher and Mister Shean" vaudeville routine. The Front group passes a resolution, for example, to ban tests of atomic weapons. The U.S.S.R. quickly responds to the "will of the people" and calls officially for such a ban. Or, on the other hand, the USSR officially proposes a disarmament plan, and the Front soon thereafter passes a similar resolution, thus providing "popular support" for the Soviet proposal.

This approach was particularly successful during World War II to encourage popular support of the Russian military effort and since the war to arouse sympathy for the Soviet "Peace Offensive."

Front organizations also constitute unusually convenient arenas for the proselytization of new members for the Communist Party. Once attracted into active participation in the front's program, the newcomer can be slowly drawn into the Party through indoctrination. Kintner and Kornfeder, *The New Frontier of War* 49–50; Kirkpatrick, p. 30; Overstreet, p. 169.

And finally, front organizations have served as successful fund-raising devices for the Communist movement. A great number of persons unwilling to contribute directly to the Communist Party will make donations to groups operating under the banners of "civil liberties," "peace," or "freedom." Much of the funds raised by front groups does not go "to the cause for which the group publicly is working. In some cases funds raised for a so-called worthy cause are diverted to the Communist Party by direct theft

and dishonest bookkeeping transactions. In other cases money is diverted by payment of large sums to Communist agents, lawyers, publicists and workers within the particular group, who turn over substantial amounts of their wages and fees to the Party." Fourth Report of the Senate Fact-Finding Committee on Un-American Activities of the California Legislature (1948), quoted in Selznick, p. 122.

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APPENDIX C

OTHER COMMUNIST-FRONT CASES BEFORE THE BOARD[1]

1. *American Peace Crusade* (Board Docket No. 117–56).—The American Peace Crusade was formed by members of the Communist Party to promote sympathy for Communist peace appeals and for other Party positions. More specifically, it promoted reconciliation with Communist China, cessation of the Korean War, total disarmament, and the convening of a peace conference. The goals were pursued through rallies, mass marches and pilgrimages, petitions and special appeals, union resolutions, and national conventions. The Crusade's connection with the Party was not disclosed to those from whom it solicited support. See *Haufrecht* v. *Subversive Activities Control Board*, 322 F. 2d 403 (C.A. D.C.).

2. *California Labor School, Inc.* (Board Docket No. 115–53).—The School was formed from a pre-existing Communist Party school known as the "Tom Mooney Labor School." The administration and staff of the California Labor School consisted largely of Communist Party members. The School was intended to teach Party members how to eliminate "Browderism" and "revisionism," and to re-establish the Marxist-Leninist revolutionary line. Much of the instruction

[1] The material in this Appendix is taken from the reports of the Board. We have described all the cases in which the Board has determined an organization to be a Communist front except that of National Council of American-Soviet Friendship, Inc., in which the court of appeals reversed for insufficiency of the evidence. *National Council of American-Soviet Friendship* v. *Subversive Activities Control Board*, 322 F. 2d 375 (C.A. D.C.).

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given at the School centered on the problems of minorities, particularly racial groups, in the United States. Party members were instructed to use the School as a means of recruiting members of labor organizations into the Party. The School was unusual for a front since, except for its name, little effort was made to conceal its connection with the Party. See *California Labor School* v. *Subversive Activities Control Board,* 322 F. 2d 393 (C.A. D.C.).

3. *Civil Rights Congress* (Board Docket No. 106–53.)—The Congress was formed by a merger of organizations such as the International Labor Defense (an affiliate of the International Red Aid, an international Communist organization with headquarters in Moscow), the National Federation for Constitutional Liberties, and the National Negro Congress. The Congress, which was under Party domination and control, devoted most of its energies to the defense of the Party leaders indicted under the Smith Act. These activities included mass protests, distribution of literature and petitions, and arrangement for attorneys and bail funds. It also sought repeal of the Smith Act, abolition of Congressional investigations of subversive activities, and the defeat of legislation detrimental to the Party. The Congress helped the Party through its ability to appeal to the public, particularly for funds, under the guise of an organization devoted to civil liberties, with no connection with the Party, in situations where the Party itself could gain little or no support. See *Patterson* v. *Subversive Activities Control Board,* 322 F. 2d 395 (C.A. D.C.).

4. *Jefferson School of Social Science* (Board Docket No. 107–53).—Every member of the School's Board of Trustees since 1950 has been a Communist Party member as were the large majority of its administrative staff. The School was used by the Party

to instruct its members on racial and economic problems in this country in order to prepare them to take advantage of disturbances which might arise. After 1945, the Party gave much attention to the recruitment of prospective students from the Negro and industrial communities for the purpose of indoctrination and future enlistment in the Party. As graduates of the Jefferson School and as Party members, such persons would then be qualified to perform vital functions of recruitment, agitation, and organization within their respective communities. The School attempted to give the impression that it merely taught patriotism and was not connected with the Party. See *Jefferson School of Social Science* v. *Subversive Activities Control Board*, 331 F. 2d 76 (C.A. D.C.).

5. *Labor Youth League* (Board Docket No. 102-53).—The League was governed by a National Council, a majority of whom were Communist Party members, and administered by a National Chairman, who originally was National Youth Director of the Communist Party. The Communist Party created the Labor Youth League in 1949 as a separate, non-Party youth organization, based on principles of Marxism-Leninism, to educate young people in the "spirit of socialism." Members of the League were urged to take courses in the Jefferson School of Social Science as preparation for their eventual induction into full Party membership. The League published a newspaper and a magazine, both of which advanced the Marxist cause and espoused principles of "scientific socialism." As part of its program of "education" and indoctrination, the League consistently praised the Soviet Union and criticized the United States, and agreed with the Communist Party on all foreign and domestic issues. The League concealed its subordination to the Party. See *Labor Youth League* v. *Sub-*

versive Activities Control Board, 322 F. 2d 364 (C.A. D.C.).

6. *United May Day Committee* (Board Docket No. 111–53).—The Committee was created by the Communist Party shortly after the Second World War and its officers were consistently Party members. Most of its activities were conducted during brief periods each year in preparation for May Day celebrations, primarily in New York. The Committee employed racial, political, and economic slogans and themes appealing to as many labor groups as possible in order to form a broad base of operations and to present the image of unanimity of all participating organizations. Party members controlled the preparation of literature, solicitation of finances, and arrangements for speakers and program. Secret control of the annual May Day demonstrations permitted the Party to profit by the prestige of legitimate mass organizations and to gain access for propaganda purposes to a vast number of non-Communist workers. See *Weinstock* v. *Subversive Activities Control Board,* 331 F. 2d 75 (C.A. D.C.).

7. *Washington Pension Union* (Board Docket No. 114–55).—The Pension Union was established originally to provide pension protection for the elderly. The Communist Party undertook to infiltrate and gain control of the organization in its formative years, and, after a Party member became executive secretary and later president of the Union, activities were divided between support of programs for the elderly and support of the Party and its goals. The Union took positions on foreign and domestic affairs, unrelated to its purported purposes, but consistent with positions of the Party. Its opposition to the Smith Act prosecutions was pointed to by the Party as evidence of popular opposition to the trials. The

Pension Union was used by the Party to expose a large group of people to Communist propaganda since the Union concealed its Communist connections. See *Washington Pension Union* v. *Subversive Activities Control Board*, 322 F. 2d 398 (C.A. D.C.).

8. *Connecticut Volunteers for Civil Rights* (Board Docket No. 121–57).—This organization was formed at the direction of officials of the Communist Party by Party members to obtain support for Party officers prosecuted under the Smith Act. Its officers and leaders were members of the Communist Party and its policies were dictated by the Party. Primary attention was given to the raising of defense funds and the circulating of a variety of literature designed to arouse public condemnation of the Smith Act and popular support for those prosecuted under it. The Volunteers did not make its connection with the Communist Party known to the general public whose support it sought.

9. *California Emergency Defense Committee* (Board Docket No. 123–57).—The association was founded by the Party in 1951 primarily to provide legal and financial aid for leaders of the California Communist Party indicted under the Smith Act and to agitate against such prosecutions. The Committee consolidated the efforts of a variety of smaller defense committees, each one previously formed by the Party to arouse support for an individual defendant or to seek public approval in a specific locality. The Committee's initial co-chairman and a number of subsequent important officers were members of the Communist Party. Other Party members were assigned to liaison positions between the Committee and the Party and as area coordinators and supervisors for the Committee. At each stage of the Committee's activities the Party issued assignments and directives

to the Committee to insure control of those activities, and reports on the success of the Committee were made at Party meetings. The Committee was also used as a recruiting ground to attract and indoctrinate non-Communists for future Party membership. The Committee did not publicly acknowledge its affiliation with the Communist Party.

10. *Colorado Committee to Protect Civil Liberties* (Board Docket No. 120–57).—The association was founded in 1954 under the leadership, and with the financial assistance, of the Communist Party in Colorado. Operating under the control of a tightly-knit group of Party members, the Committee devoted itself almost exclusively to generating public support for the defense of Communist Party leaders prosecuted in Colorado under the Smith Act. Like its sister "defense" organizations throughout the United States, the Committee was formed for the purpose of eliciting contributions and sympathy from the great portion of the public not normally concerned with the legal welfare of Communist Party officials. The Committee attempted to suggest that it was concerned with the rights of everyone and therefore did not disclose to the public its commitment to Communism. See *Blau* v. *Subversive Activities Control Board,* 322 F. 2d 397 (C.A. D.C.).

11. *Advance and Burning Issues Youth Organizations* (Board Docket No. 126–63).—Advance was founded as a result of extended discussions within the Communist Party during 1959 concerning the need for a Marxist youth organization within the Party apparatus in this country in order to attract and indoctrinate new converts and train new leaders. It merged in 1962 with a similar organization, Burning Issues.

Five of the seven original officers of Advance were Communist Party members, and in 1961 all seven officers were Party members. Party leaders considered Advance as the youth division of the Party in this country. There was constant communication and inter-change of personnel between the Party and Advance. This organization was intended to be broad enough in scope to include non-Communist as well as Communist young people. Advance advocated such policies as equalization of income throughout the world, abolition of the draft, unilateral disarmament, "hands off Cuba," and other domestic and foreign relations policies similar to those advocated by the Communist Party. The connection of Advance with the Party was concealed from the general public.

12. *Veterans of the Abraham Lincoln Brigade* (Board Docket No. 108–53).—This organization is described in the government's brief in No. 65, this Term.[2]

[2] The Attorney General filed eight petitions with the Board for orders requiring additional organizations to register as Communist fronts, which were dismissed on motion of the government because of the dissolution of the groups. These organizations were: *International Workers Order, Inc.; American Slav Congress; Committee for a Democratic Far Eastern Policy; Joint Anti-Fascist Refugee Committee; Council on African Affairs; National Negro Labor Council; Save our Sons Committee;* and *Committee to End Sedition Laws.*

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